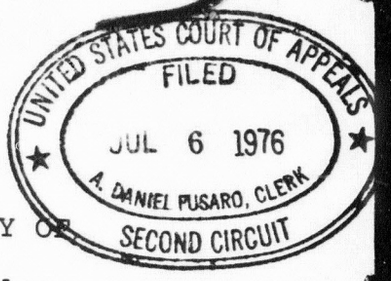
United States Court of Appeals

for the Second Circuit

APPENDIX

76-6003

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT



Docket No. 76-6003

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, and THE CITY OF NEW YORK,

Plaintiffs-Appellees,

-against-

LOCAL 638 . . . LOCAL 28 OF THE SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL 28 JOINT APPRENTICESHIP COMMITTEE,

Defendants-Appellants,

SHEET METAL AND AIR-CONDITIONING CONTRACTORS' ASSOCIATION OF NEW YORK CITY, INC., etc.

Defendants.

- -

LOCAL 28,

Third-Party Plaintiff,

-against-

NEW YORK STATE DIVISION OF HUMAN RIGHTS,

Third-Party Defendant.

- -

LOCAL 28 JOINT APPRENTICESHIP COMMITTEE,

Fourth-Party Plaintiff,

-against-

NEW YORK STATE DIVISION OF HUMAN RIGHTS,

Fourth-Party Defendant.

- -

On Appeal From The United States District Court
For The Southern District of New York

SECOND JOINT APPENDIX

ROBERT B. FISKE, JR., ESQ.
United States Attorney
Attorney for Plaintiffs-Appellees
Equal Employment Opportunity Commission

SOL BOGEN, ESQ.
Attorney for Defendants-Appellants, Sheet Metal Workers International Association, Local Union No. 28 and Local 28 Joint Apprenticeship Committee

July 6, 1976

PAGINATION AS IN ORIGINAL COPY

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, and THE CITY OF NEW YORK,

Plaintiffs,

-against-

LOCAL 638 . . . LOCAL 28 OF THE SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL 28 JOINT APPRENTICESHIP COMMITTEE . . . SHEET METAL AND AIR-CONDITIONING CONTRACTORS' ASSOCIATION OF NEW YORK CITY, INC., etc.,

Defendants.

LOCAL 28,

Third-Party Plaintiff,

-against-

NEW YORK STATE DIVISION OF HUMAN RIGHTS,

Third-Party Defendant.

LOCAL 28 JOINT APPRENTICESHIP COMMITTEE,

Fourth-Party Plaintiff,

-against-

NEW YORK STATE DIVISION OF HUMAN RIGHTS,

Fourth-Party Defendant.

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71 Civ. 2877 (HFW)

JOINT
NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that Sheet Metal Workers' International Association, Local Union No. 28 and the Local 28 Joint Apprenticeship Committee, two of the defendants above named, hereby appeal to the United States Court of Appeals for the

Second Circuit from the Affirmative Action Program and Order (one paper) entered in this action on the 13th day of November, 1975, in favor of the plaintiffs and against defendants.

Dated: New York, N. Y.
January 6, 1976.

SOL BOGEN
One Penn Plaza
New York, N. Y. 10001
Attorney for Defendant Sheet Metal Workers' International Association, Local Union No. 28

SOL BOGEN
One Penn Plaza
New York, N. Y. 10001

-and-

ROSENTHAL & GOLDHABER
44 Court Street
Brooklyn, N. Y. 11201
Attorneys for Defendant Local 28 Joint Apprenticeship Committee

1st SUPPLEMENTAL RECORD

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, and THE CITY OF NEW YORK,

Plaintiffs,

-against-

LOCAL 638... LOCAL 28 OF THE SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL 28 JOINT APPRENTICESHIP COMMITTEE ... SHEET METAL AND AIR-CONDITIONING CONTRACTORS' ASSOCIATION OF NEW YORK CITY, INC., etc.,

Defendants.

LOCAL 28,

Third-Party Plaintiff,

-against-

NEW YORK STATE DIVISION OF HUMAN RIGHTS,

Third-Party Defendant.

LOCAL 28 JOINT APPRENTICESHIP COMMITTEE,

Fourth-Party Plaintiff,

- against-

NEW YORK STATE DIVISION OF HUMAN RIGHTS,

Fourth-Party Defendant.

71 Civ. 2877 (HFW)

AFFIRMATIVE ACTION PROGRAM

AFFIRMATIVE ACTION PROGRAM

Introduction

1. This Affirmative Action Program ("Program") is adopted pursuant to the Decision and Order dated July 18, 1975 and the Order and Judgment dated August 28, 1975 and entered in this action on September 2, 1975 ("Order and Judgment"). The goal of this Program is to assure that the

non-white* membership in Local Union No. 28 of the Sheet Metal Workers' International Association ("Local 28") reaches a minimum level of 29% by July 1, 1981; to assure that substantial and regular progress is made toward this goal in each year prior to 1981; and to assure that non-white members of Local 28 and non-white apprentices of Local 28 share equitably in all employment opportunities afforded to members of Local 28.

2. For the purpose of reaching the above goal of 29% by July 1, 1981 this Program established as interim percentage goals for the non-white membership of Local 28 the following:

July 1, 1976	10%
July 1, 1977	13%
July 1, 1978	16%
July 1, 1979	20%
July 1, 1980	24%

Each of the above percentages shall be measured against the total membership of Local 28 as of each interim goal date respectively and the final goal date. For the purpose of measurement, total membership shall include all journeyman members, all pensioners** who have been employed as sheet-metal workers within the last three years, and all members or participants in the Local 28 Apprentice Program ("apprentice Program"). The parties to this action and the Administrator are to implement this Program so that these interim goals may be attained. The Administrator shall periodically review the progress toward the attainment of these goals and

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* "Non-white" as used in the Program means black and Spanish surnamed individuals.

** "Pensioner" as used in the Program means any individual who receives benefits from the Local 28 pension program.

take such action as he is empowered to take under the Order and Judgment to assure their achievement.

3. Admission to Journeyman membership in Local 28 shall be attained only through the following procedures:

a) Successful completion of a 'hands-on' journeyman test administered pursuant to Paragraphs 5-14; or

b) establishment of proof of the required experience in the sheetmetal trade pursuant to Paragraph 15; or

c) successful completion of the Local 28 Apprentice Program; or

d) transfer in accordance with the Sheet Metal Workers' International Union Constitution and Ritual; or

e) organization of non-union shops.

4. Membership in the Apprentice Program shall be obtained only through the following procedures:

a) successful completion of an apprentice aptitute test as set forth in Paragraphs 21-32; or

b) entry with advanced standing as set forth in Paragraphs 33 through 36.

Admission to Journeymen Status

5. Under the supervision and with approval of the Administrator, Local 28 shall administer a 'hands-on' journeyman's test on October 11, 1975 designed to test fairly and in a non-discriminatory manner the skills needed for a jorneyman sheet metal worker. This test and its grading shall be in substance the equivalent of the 'hands-on' portion of journeyman's test given by Local 28 in

November, 1969 as revised by a sheetmetal expert provided by the plaintiffs or the New York State Division of Human Rights. Disputes as to any proposed revisions shall be resolved by the Administrator. There shall be a filing fee of $25 for this test.

6. Local 28 shall undertake a program of publicity and advertising and prepare, make available, and process applications relating to the October 11, 1975 'hands-on' journeyman's test in accordance with the standards and conditions set forth heretofore by the parties and the Administrator. The administration and grading of the test shall be under the overall supervision of the Administrator and shall be accomplished and recorded in such a manner as to facilitate the professional development and validation of future 'hands-on' journeyman's tests.

7. Under the following conditions all persons who receive a passing grade in the test described in Paragraph 5 and 6, and who are physically fit for sheetmetal work shall be eligible for admission to full journeyman membership in Local 28 as follows:

a) all non-white applicants who receive a passing grade, up to a total of 200 such applicants, shall be admitted to journeyman membership by December 1, 1975 in accordance with and subject to the provisions of Paragraphs 16-18 of the Program. In the event that more than 200 non-white applicants receive a passing grade and elect to exercise their rights to admission to journeymen

membership under this Program, the 200 non-whites with the highest grades shall be admitted by December 1, 1975; the remaining non-white applicants shall be admitted in accordance with the provisions of sub-paragraph (b) of this paragraph;

b) white applicants who receive a passing grade shall be placed on a list and ranked in descending order on the basis of their grades on the examination.

i) white applicants shall be selected for admission in the order of their ranking on the above described list on the basis of a ratio to the non-whites admitted pursuant to section (a) of this Paragraph. Said ratio shall be agreed upon by the parties, but in no event shall the ratio of non-whites to whites be less than 1 to 1. Such ratio shall be designed with the purpose of implementing the interim goals set forth in Paragraph 2. If the parties cannot agree on a ratio by November 10, 1975 the Administrator shall establish such ratio by November 15, 1975.

ii) all applicants who receive a passing grade but who are not admitted

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pursuant to subparagraph (a) or section (i) of subparagraph (b) may be ordered admitted to journeyman membership by the Administrator at a time deemed suitable by him. White applicants who have received a passing grade and who are not admitted by March 1, 1976 shall be eligible for a selection priority over other white applicants qualified by the journeyman's tested held in the Spring of 1976, or subsequent tests. Non-white applicants who have received a passing grade and who are not admitted pursuant to subparagraph (a) shall be admitted by July 1, 1976, if they so elect.

8. Local 28 shall administer a non-discriminatory, 'hands-on' journeyman's test under the overall supervision and approval of the Administrator in the Spring of 1976 and at least once a year thereafter. The Administrator, after consultation with the parties, may apply to the Court to decrease the frequency of the tests consistent with the requirements of the interim goals set forth in Paragraph 2.

9. The journeyman's 'hands-on' tests administered pursuant to Paragraph 8 shall be professionally developed and validated in accordance with EEOC Guidelines. Within a reasonable time before the administration of each test (which shall not be less than four weeks unless good cause is shown), Local 28 shall furnish counsel for the parties and the Administrator with (i) a copy of a report demonstrating

the validity of the test and (ii) a copy of the test to be administered, provided that counsel for the parties and the Administrator shall not distribute or disclose the contents of the test to any individual or organization except for the purpose of professional validation thereof.

10. All qualified applicants shall be eligible to take the 'hands-on' journeyman test specified in this Program. A qualified applicant is defined as follows: any person who

a) has or will have attained the age of 22 by the date of the test, and

b) is a citizen or a lawful permanent resident alien legally entitled to work in the United States, and

c) has resided in New York City or the counties of Westchester (N.Y.) Nassau (N.Y.) Suffolk (N.Y.), Passaic (N.J.) Bergen (N.J.) Hudson (N.J.) Union (N.J.) or Essex (N.J.) for 60 consecutive days prior to the filing of an application, and

d) has one year of sheet metal work experience including but not limited to employment as a member in any branch of Local 400 of the Sheet Metal Workers International Association, sheet metal experience in the Armed Forces or vocational education or training related to the skills of a journeyman sheet metal worker.

Persons presently registered or recently registered in the Local 28 Apprentice Program or any other recognized apprentice program affiliated with the Sheet Metal Workers' International Association are not eligible.

11. Subject to the approval of the Administrator, Local 28 shall develop a standardized application form for the 'hands-on' journeyman's test. Such forms shall include only the following:

a) provisions for the name, address, telephone number, social security number, age, sex and race or ethnic identification of the applicant (with a notation that information regarding race or ethnic identification is required solely for the purpose of compliance with the court order herein and the regulations of the United States Equal Employment Opportunity Commission), and previous sheet metal experience.

b) information regarding the eligibility requirements, fee, date, time, location, and nature of the 'hands-on' journeyman's test.

12. Local 28 shall make available an application form for the 'hands-on' journeyman's test and a short description of the nature of the test in the following manner:

a) at the offices of Local 28;

b) by mail in response to inquiries and requests made by mail;

c) in bulk to plaintiffs, City

Department of Employment, the New York State Employment Service, Recruitment and Training Program, Inc., Fight Back, and the other governmental or community agencies listed in Appendix A as amended from time to time.

Completed applications for the test shall be accepted by mail or delivery in person at the offices of Local 28. Local 28 may establish, with the approval of the Administrator, a suitable cut-off date for the acceptance of applications. Local 28 may establish a fee for the taking of the 'hands-on' journeyman test consistent with the cost of administering such a test, but in no event shall such fee exceed $25.00.

13. The 'hands-on' journeyman test shall be graded by a Board of Examiners consisting of three members knowledgable in Sheet Metal; a representative chosen by Local 28, a representative chosen by the Administrator, and a representative chosen by the Plaintiffs and the State Division of Human Rights. Such Board shall act by majority vote. Said Board of Examiners shall employ the passing grade level developed pursuant to the validation procedures set forth in Paragraph 9. All applicants shall be advised of their status by first class mail within 30 days of the test. Non-whites who fail the test shall be advised of their possible eligibility for advanced standing in the apprenticeship program.

14. (a) A qualified non-white applicant who passes the test and is physically fit to perform sheet metal work shall be admitted to journeyman status in Local 28

within 60 days of the test unless the applicant elects to defer admission pursuant to Paragraph 19.

(b) A qualified white applicant who passes the test and is physically fit to perform sheet metal work shall be admitted to journeyman status in Local 28 in accordance with the following procedures:

(i) within 20 days of the test the parties shall attempt to agree on an appropriate ratio of non-whites to whites to be admitted to journeyman status. This ratio will be established with the purpose of fairly implementing the interim and final goals set forth in Paragraphs 1 and 2 but in no event shall said ratio be less than one-to-one. If no agreement is reached within 20 days, the Administrator shall establish the ratio within 5 days thereafter.

(ii) in accordance with the above ratio white applicants shall be admitted on the basis of the highest scores achieved on the 'hands-on' journeyman test;

c) To the best of their ability the parties and the Administrator shall endeavor to set forth on the application form the most accurate estimate of the opportunities available to whites based on the number of preferred candidates pursuant to Paragraph 7 (b), the number of expected non-white candidates, and past experience.

15. Commencing January 1, 1976 there shall be established a program for admission to Local 28 journeyman membership of non-whites who have had four years experience, obtained in the United States or elsewhere, in sheet metal work or employment reasonably related or similar to sheet metal work, including experience in the Armed Forces, or vocational training related to the skills of a sheet metal

worker. Persons eligible for admission under this program must,

a) be a resident of New York City, or the counties of Nassau (N.Y.) Suffolk (N.Y.) Westchester (N.Y.), Bergen (N.J.) Passaic (N.J.) Essex (N.J,) Union (N.J.) or Hudson (N.J.) for 60 consecutive days prior to application; and

b) be age 22 or over; and

c) be physicially fit to perform sheet metal work; and

d) establish to the satisfaction of a majority of a board of three members knowledgable in sheet metal work, comprised of a representative chosen by Local 28, a representative chosen by the Administrator, and a representative chosen by the plaintiffs and the State Division of Human Rights that the applicant has the requisite sheet metal experience.

The Administrator, after due consultation with all the parties, shall establish procedures for application to this program, for investigation and verification of the criteria set forth in subparagraphs (a) through (d), and for the timing and conditions of admission. Appropriate publicity for the program shall be undertaken at the direction and with the approval of the Administrator.

16. (a) Upon proper application, a non-white eligible for admission to journeyman membership in Local 28

pursuant to Paragraphs 5 through 15 or Paragraph 35(d) of this Program may request of Local 28's Executive Board that the Local 28 initiation fee be reduced pursuant to the provisions of Paragraph 22(d) of the Order and Judgment. Within 5 days of receipt of such application, the Local 28 Executive Board shall render a decision on the application in writing and notify the applicant, the Administrator and the parties of the disposition of the application (the notification to the Administrator and the parties shall include the name and address of the applicant). If such application is denied in whole or in part, or is not acted upon within five days of its receipt by the Executive Board of Local 28, an application may be made to the Administrator who shall either grant or deny the request in writing after duly considering all the factors set forth in Paragraph 22(d) of the Order and Judgment. In considering such an application the Administrator may require the submission of such information, documents, or other data from either Local 28 or the applicant as he deems necessary.

(b) Upon proper application a non-white eligible for admission to journeyman membership in Local 28 pursuant to Paragraphs 5 through 15 or Paragraph 35(d) may request of the Local 28 Executive Board that payment of the Local 28 initiation fee be pro-rated over a period of time not to exceed two years. Within 5 days of the receipt of such application the Local 28 Executive Board shall render a decision on the application in writing and notify the applicant, the Administrator and all parties of the disposition of the application (the notification to the Administrator and the parties shall include the applicant's name and address). If such application is denied in whole or in

part or not acted upon within 5 days of its receipt by the Executive Board of Local 28, an application may be made to the Administrator who shall either grant or deny the application in writing and set such schedules and payments as he shall determine. The decisions of the Executive Board of Local 28 and the Administrator shall be made having duly considered all pertinent facts, including, but not limited to, the following circumstances:

i) the financial circumstances of the applicant and Local 28;

ii) the present and future employment situation in the sheet metal industry in New York City in general;

iii) the liklihood and nature of future employment for the individual applicant

17. At any time after an application pursuant to Paragraph 16 has been pending with the Administrator for more than 5 days a non-white eligible for admission to journeyman membership in Local 28 pursuant to Paragraph 5 through 15 or Paragraph 35(d) of this Program shall be admitted conditionally to journeyman membership upon payment of $100 dollars and three months dues pending the determination of the Administrator which shall be made within 30 days of the date of the application to the Administrator. During such conditional membership an applicant will be entitled to all the rights and privileges of regular journeyman membership.

18. The granting of any application pursuant to Paragraph 16 shall not diminish any rights or privileges accruing to journeyman membership in Local 28.

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19. A person eligible for admission pursuant to Paragraphs 5 through 14 shall be permitted to defer such admission for up to six months from the time he is first entitled to be admitted. During such period, a person who has elected to defer may apply to the administrator for further deferral of admission for up to another 12 months. If an applicant invokes his right of deferral he shall be admitted, on the same terms and conditions as he was previously entitled, within 30 days of written notice to Local 28 that he seeks to be admitted.

20. Local 28 shall issue "permits" or "identification slips" only with the express written consent of the Administrator, and pursuant to Paragraph 22(f) of the Order and Judgment.

Apprentice Program

21. The Local 28 Joint Apprenticeship Committee ("JAC") shall maintain an apprentice program of four years duration or less. The terms and conditions of the apprentice program shall be as set forth in the Collective Bargaining Agreement ("Standard Form of Union Agreement ... between Local ... and Sheet Metal Contractors."), the Local 28 Joint Apprenticeship Trust and Indenture, and the rules and regulations thereunder except where modified by the Order and Judgment, the provisions of this Program, or order of the Administrator pursuant to his powers under the Order and Judgment.

22. The apprentice program shall indenture no less than 300 apprentices by July 1, 1976 of which no less than 100 apprentices shall be indentured by February 2, 1976. No less than 200 apprentices shall be indentured in each year thereafter up to and including 1981. Said numbers

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shall include those apprentices admitted with advanced standing. The JAC may indenture apprentices in two separate classes during a year.

23. Apprentices shall be assigned for employment in a ratio of not less than one apprentice for every four journeymen working of the aggregate journeymen employed. Seniority shall not be a criterion for employment, and apprentices shall be rotated for employment where necessary and feasible. The JAC shall make every effort to provide apprentices with classroom instruction, including evenings and Saturdays where necessary, during periods of unemployment, and shall credit such hours toward fulfillment of apprenticeship requirements. The JAC may authorize the accelerated advancement or graduation of any apprentice as it deems proper.

24. Upon successful completion of the Apprenticeship Program, apprentices shall be promptly admitted to full journeyman membership upon payment of the balance due of the initiation fee, if any, which upon application to the Local 28 Executive Board, may be paid on an installment basis for good cause shown, and subject to the procedures contained in Paragraph 16.

25. Applications shall be made available to and accepted from any qualified candidate. A qualified candidate is defined as follows: any person who is deemed physically fit for sheet metal work and who has or will have attained the age of 18 years by the date of indenture of the next scheduled apprentice class and who is not older than 25 years of age (for veterans of active military duty the age limit is extended one year for each year of such duty up to the age of 30 and up to the age of 35 for non-whites applying

for advanced standing). For the apprentice aptitude test to be administered in November, 1975 only, JAC may require proof of completion of a tenth grade course of education. The JAC shall validate the tenth grade requirement before said requirement may be imposed for subsequent examinations.

26. With the approval of the Administrator JAC shall develop a standardized application form for the Apprentice Program. The application form shall include information about the date of the next class of apprentices to be indentured, and shall require only the following information of the applicant:

a) Name, address and telephone number:

b) Birth date and age:

c) Social Security number;

d) Extent of education;

e) Sex;

f) Race or ethnic classification; (with a notation that this information is required solely for the purposes of compliance with federal anti-discriminations statutes);

g) military service;

h) convictions and pending criminal charges.

i) Citizenship or lawful permanent resident alien status

27. Application forms for the Local 28 JAC Apprentice Program shall be available at the offices of the JAC during normal business hours and at the offices of the organizations listed in Appendix A at least 60 days before

an examination. Application forms shall be made available by mail upon written request. Completed applications shall be accepted in person or by mail at the offices of the JAC. There shall be a filing fee of no more than $15.00. Application forms shall be made freely available to any governmental employment office and minority community organizations not listed in Appendix A upon request. The time for filing applications for a particular apprentice test may be closed by the JAC at a reasonable time (not to exceed three weeks) before the date of the examination.

28. An apprentice aptitude test shall be given on December 11, 1975 and at least once yearly thereafter at a date, time and location approved by the Administrator. The test shall consist of the following professionally developed and validated components: (1) a basic "read and follow directions" test designed to ascertain an applicant's ability to master and understand those written and verbal instructions, directions, and other communications necessary to participate in the Apprentice Program at the first year level; and (2) a mechanical comprehension test similar in substance and scope to that mechanical comprehension test administered by JAC in April 1969. There shall be professionally developed and validated a qualifying score on the "read and follow directions" test designed to reflect the minumum ability necessary to participate in the Apprentice Program at the first year level. [Consideration of the inclusion of a math test in the December examination has been postponed. See attached letter.]

29. Within three weeks of the administration of an apprentice entrance test, JAC shall provide the Administrator and all parties with:

(a) the names, race identification, raw scores and rank of all candidates on all tests; and

(b) the mean and median scores on all tests of all identifiable racial and ethnic groups among the candidates.

30. Persons selected to be indentured as apprentices pursuant to Paragraph 22 shall be selected in accordance with a ratio of non-whites-to-whites which shall be established by agreement of the parties within 30 days after the tests results are known, or by the Administrator within 15 days thereafter if the parties fail to agree. The parties shall agree by November 10, 1975, what the ratio shall be for the classes to be indentured in February and June, 1976, If no agreement is reached the Administrator shall establish the ratio by November 15, 1975. In arriving at an appropriate ratio for the entry of non-whites and whites into the Apprentice Program, the parties and the Administrator shall use their best efforts to assure that the total population of the program shall not exceed 60% non-white individuals, and that an individual term or class shall not exceed 70% non-white individuals.

31. In fulfillment of JAC's and Local 28's obligations under Paragraphs 22 and 30 apprentices chosen by means of the apprenticeship entrance test shall be selected from those who meet or exceed the qualifying score on the "read and follow directions" test in the following manner:

(a) the white apprentices shall be selected on the basis of the highest scores received on the mechanical

comprehension test among the white eligible qualified candidates;

(b) the non-white apprentices shall be selected on the basis of the highest scores received on the mechanical comprehension test among non-white eligible qualified candidates subject to the provisions of paragraph 35.

32. Persons selected for the Apprentice Program may be required to appear for orientation and a physical examination prior to being indentured. The cost of physical examinations are to be born by successful applicants. Additional persons may be invited to orientation and a physical examination by Local 28 JAC if that appears desirable. Persons selected in accordance with the above procedures shall be indentured as apprentices unless such indenturing is waived by them, or they are certified physically unable to perform sheet metal work by a medical practitioner licensed in New York State.

ADVANCED APPRENTICES

33. There shall be established by the JAC procedures for the admission and advanced placement in the Apprentice Program of non-white apprentices who have experience in sheet metal work or trade education but cannot perform at journeyman level. Applicants for advanced placement shall be physically fit and shall be not less than 18 years old or more than 35 years old by the date of indenture of the next scheduled apprentice class.
For such person applying to be indentured in February and July, 1976 only, the JAC may require proof of completion of a tenth grade course of education by that date. Such

requirement must be validated for subsequent utilization.

a) Applicants with at least six months but less than one year experience in sheet metal work or trade education shall be eligible to take the apprenticeship aptitude examination as set forth in Paragraph 28.

b) Applicants with more than one year experience in sheet metal work or trade education shall be eligible for indenture without taking the examination.

c) The overall apprenticeship recruiting and publicity campaign shall include a component directed toward advanced apprentices.

34. The Training Coordinator of JAC shall evaluate the experience of all applicants for advanced standing and shall make placement to the appropriate grade level. Applicants who challenge the grade level assigned shall be advised of their right to appeal to the Administrator.

35. a) Apprentices shall be selected for advanced standing in the following manner: those who meet the requirements of Paragraph 33(a) whose ranking on the apprenticeship aptitude examination qualifies them for acceptance into the apprenticeship program shall be admitted with advanced standing along with such numbers of those who meet the requirements of Paragraph 33(b) so that the combined total of advanced apprentices shall equal the number of non-white first term apprentices admitted, unless the group of advanced apprentices is sooner exhausted.

b) The numbers of apprentices admitted with advanced standing shall be included in the total of non-white apprentices selected on the basis of the ratios

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established pursuant to Paragraph 30.

c) An advanced apprentice shall be entitled to all rights, privileges and other benefits including work referral, pay, instruction, and supervision accruing to regular apprentices at the same level of training.

d) Apprentices admitted with advanced standing pursuant to Paragraphs 33 through 35 who successfully complete the apprenticeship program may make the applications provided for in Paragraph 16 of this Program.

e) Advanced apprentices assigned for work may be utilized to satisfy City and City-assisted contract requirements for the employment of minority trainees.

36. Nothing in Paragraphs 33 - 35 is intended to precluded the JAC from establishing a similar program for whites.

RECORDS

37. In addition to any other records or lists required to be maintained under the terms of this Program or the Order and Judgment, Local 28 and JAC, as the case may be, shall maintain separately for whites and non-whites, records and lists containing the following information, beginning with the effective date of this Program.

a) Persons who request an application for or apply to take the "hands-on' journeyman's test described in Paragraphs 5 and 8;

b) Persons who take the "hands-on' journeyman's test described in Paragraphs 5 and 8;

c) Persons who pass the 'hands-on' journeyman's test described in Paragraphs 5 and 8;

d) Persons who applied for journeyman admission on the basis of experience, described in Paragraph 15;

e) Persons who are admitted, and those rejected, for journeyman membership on the basis of experience, described in Paragraph 15;

f) Persons who seek or apply to transfer into Local 28 from an affiliated sister local union;

g) Persons who inquire of Local 28 about the possibility of transferring into Local 28 from an affiliated sister local union;

h) Persons who inquire of Local 28 as to the availability of work opportunities with or through Local 28, including but not limited to inquiry about or seeking "permits" or "identification slips";

i) Persons to whom "permits" or identification slips" are issued or work opportunities with or through Local 28 are otherwise made available.

j) Persons who contact Local 28 or JAC seeking sheet metal work;

k) Persons who are employed as sheet metal workers or apprentices by Local 28 contractors.

l) Persons working in sheet metal shops at the time they are organized by Local 28;

m) Persons who are reinstated to journeyman membership or to the Apprentice Program;

n) Non-whites who apply for advanced standing in the apprenticeship program described in Paragraphs 33-35;

o) Non-whites who are granted advance standing in the apprenticeship program and the standing granted as described in Paragraphs 33-35;

The records and lists specified in subsection (a) through (o) of this Paragraph shall contain the name, address, race, or national origin, union affiliation, if any, of each individual listed therein, as well as the date of the application, test, inquiry, contact, or employment (and the name of the contractor, where applicable), and the disposition with reasons, of each such application, test, inquiry, contact or employment. Copies of these records and lists shall be submitted to counsel for the parties and the Administrator at least once every three months.

38. Local 28 or JAC, as the case may be shall submit the following data to the Administrator and parties at the time specified.

a) the name and race identity of persons admitted into (i) journeyman status in Local 28 or (ii) apprentice status in the Apprentice Program, within 5 days of such admission;

b) on January 1 and July 1 of each year the total number of (i) journeyman members of Local 28, (ii) pensioner

members of Local 28 (as defined in Paragraph 2), and (iii) apprentices. Such reports shall include the percentage of non-whites in each group.

39. The JAC shall maintain complete records of all applications and other material concerned with the selection and work records of apprentices. These records shall include but not be limited to an applicant log for each examination showing the name, race, date or birth of each applicant, dates of completion of each step in the application procedure, disposition of each step in the application procedure, and disposition of each application. All such records shall be made available for inspection and copying by the plaintiffs at reasonable intervals during normal working hours or at other mutually convenient times. In addition, records shall be submitted to the Administrator and plaintiffs as follows:

a. Prior to each apprentice entrance test and within 7 days of the closing of the application procedure the JAC shall submit a report including the following information for each person who filed or requested an application for that apprentice examination: name, address, telephone number and race or national origin, if known for those who request applications.

b. Within 20 days after indenturing a class of apprentices the JAC shall provide a report of the names and ethnic classification of all persons who were rejected during the application and testing period and the reason therefore and the names of all persons whose application became inactive and the reason therefore.

c. Every six months subsequent to the indenturing of a class of apprentices the JAC shall furnish a report giving the names of all non-white apprentices, the name(s) of contractors to which each was referred and the number of hours worked.

d. The Joint Apprenticeship Committee shall furnish the names of any non-white apprentices who are dropped from the Apprentice Program. Said information shall be furnished within twenty days from the date action is taken by the Joint Apprenticeship Committee. Said report shall contain the reason why the individual was dropped from the program and the steps taken by the Joint Apprenticeship Committee to retain the individual in the program. The report shall also include the training and employment history of the individual while he was in the program. The Joint Apprenticeship Committee shall furnish the names of all non-white apprentices who leave the program other than by action of the JAC. Such report shall contain the reason the apprentice has left the program if known by the JAC. Said information shall be furnished within twenty-days from the time the JAC is notified that the apprentice has left the program.

40. All records and lists required to be compiled by this Program shall be maintained for ten years and shall be made available for inspection and copying by the parties and the Administrator on reasonable notice during regular business hours or at other mutually convenient time without further order of the court.

Advertising and Publicity

41. The parties shall use their best efforts to disseminate accurate information to the non-white community of opportunities within Local 28 and the Local 28

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apprentice program.

42. Prior to each "hands-on" journeyman's test and apprentice entrance test at a time to be selected by the Administrator to insure full coverage and effectiveness, Local 28 (in the case of the "hands-on" journeyman's examination) and JAC (in the case of apprentice entrance tests) shall undertake a program of advertising and publicity, under the overall supervision of the Administrator, designed to inform the non-white community in New York City of the date, location, and nature of such examinations, the qualifications therefor and the opportunities available upon successful completion of the test. These campaigns may include print and electronic media, dissemination of material to community, government and minority organizations. The City of New York may provide space and opportunities for such publicity.

43. By March 1, 1976 Local 28 and JAC shall provide to the Administrator and the other parties a written plan of an effective general publicity campaign designed to inform the non-white community in New York City of non-discriminatory opportunities in Local 28 and the Local 28 apprentice program as provided in the Order and Judgment and this Program. The other parties shall have 30 days to comment upon the written plan and the Administrator, having considered all submissions, shall revise the plan if he deems necessary and shall order it into effect by May 1, 1976.

Work Referral

44. The Administrator shall conduct a study of the present Local 28 work referral system as described in the written statement submitted pursuant to Paragraph 21(g) of

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the Order and Judgment. This study shall be completed by June 15, 1976 and the Administrator shall submit to the parties such recommendations he deems necessary to assure that non-whites do not bear a disproportionate share of unemployment.

Resolution of Disputes

45. (a) The Administrator shall hear and determine all complaints concerning the operation of the Order and Judgment and this Program and shall decide any questions of interpretation and claims of violations of the Order and Judgment and the Program, acting either on his own initiative or at the request of any party herein or any interested person. All decisions of the Administrator shall be in writing and shall be appealable to the Court.

(b) Any party or any individual affected by this Program may make a complaint to the Administrator within thirty days after the situation complained of arises. The Administrator shall give the parties notice of such a complaint within five days and, where a hearing is in his discretion warranted, expediously schedule such hearing.

General Provisions

46. The union and the JAC shall post conspicious notices, in language and at locations approved by the Administrator, advising individuals of their rights under this Program within 60 days after the Program is approved by the Court.

47. Except as modified, changed or amended by the terms of this Program or order of the Administrator, Local 28 and JAC shall not change, modify or amend any aspect of the operation or content of the Apprentice Program, or the

conditions or terms upon which an individual shall become a member of the Apprentice Program of Local 28 or entitled to work within the jurisdiction of Local 28.

48. At any time, any of the parties herein may apply to the Administrator and then to the Court for the purpose of seeking additional orders to insure the full and effective implementation of the terms and intent of this Program.

Dated: New York, New York

October 7 , 1975

David Raff

DAVID RAFF, ESQ.
Administrator

SO ORDERED

_____

U. S. D. J.

Date:

APPENDIX A

New York State Division of Employment (Department of Labor)

Department of Employment of the City of New York

Bureau of Labor Services of the City of New York

Recruitment and Training Program, Inc.

Fight Back

Asian Americans for Equal Employment

Black Economic Survival

Regional Neighborhood Manpower Service Centers of New York City

New York City Board of Education (Public High School and Evening Trade Division)

Williamsburg Coalition

New York Urban League

National Association for the Advancement of Colored People

Puerto Rican Community Development Project

National Association for Puerto Rican Civil Rights

Citywide Coalition of Black, Hispanic, and Asians in Construction

New York Project Equality

Commonwealth of Puerto Rico

Opportunities Industrialization Center of New York, Inc.

Bedford-Stuyvesant Restoration Corp.

New York City Human Rights Commission*

New York State Division of Human Rights*

*Send notices of exams, but no bulk application

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, and THE CITY OF NEW YORK,

Plaintiffs,

- against -

LOCAL 638 . . . LOCAL 28 OF THE SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL 28 JOIN APPRENTICESHIP COMMITTEE . . . SHEET METAL AND AIR-CONDITIONING CONTRACTORS' ASSOCIATION OF NEW YORK CITY, INC., etc.,

Defendants.

LOCAL 28,

Third-Party Plaintiff,

- against -

NEW YORK STATE DIVISION OF HUMAN RIGHTS,

Third-Party Defendant.

LOCAL 28 JOINT APPRENTICESHIP COMMITTEE,

Fourth-Party Plaintiff,

- against -

NEW YORK STATE DIVISION OF HUMAN RIGHTS,

Fourth-Party Defendant.

MEMORANDUM AND ORDER

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HENRY F. WERKER, D. J.

The court has read and considered the Affirmative Action Program submitted by the Administrator, the objections submitted by Local 28, the JAC, the City, and the E.E.O.C. together with all appendices and replies to each other's objections which were filed in court before 3 p.m. on October 17, 1975.

The following are the observations and rulings of the court which the Administrator is directed to implement by amendment and modification of the Program as submitted. References are to sections of the Program unless otherwise noted. Sections which are not otherwise mentioned are approved by implication.

1. Section 1 is approved.

2. Section 2. While the court's order and judgment did not set interim goals it was hoped that the parties could agree upon such goals as would realistically result in the ultimate percentage at the deadline. The court finds that the proposed goals are not excessive and are consequently approved. The suggestions of counsel for Local 28 are rejected as being the same type of approach to this problem as has been taken by the Union over the last ten years and which has resulted in a mere 4% non-white membership.

To the extent that pensioners are defined in the Program that definition is adopted by the court. Without discounting the political effect which the non-working pensioners' votes may have, it is the court's rationale that the Program's

goals should be primarily addressed to the work force rather than the internal operations of the Union. To do otherwise might create constitutional issues which have no place in this Program or litigation. It is the court's belief that ultimately the Union membership, including pensioners, will recognize the rights of non-whites and the fact that those rights must be enforced regardless of the cost to the courts or the governments involved in order to secure to all working people those rights which the Constitution has guaranteed.

3. Sections 3(b) and 15. There is an implied assumption on the part of Local 28 that the Program may be dragged out until the penultimate date and that it need not diligently and forcefully attempt to achieve the ultimate goal at an earlier date. Nothing is further from the contemplation of the court. If that goal can be reached in 1, 2 or 3 years then it should be so reached. This is why the court adopts the proposals contained in the above-numbered paragraphs. Defendant Local 28's claim that no necessity or desirability has been shown and that the proposal is premature is, for the reason above stated, as well as the whole purpose of the ligitation, misguided. All avenues are opened by the opinion and should remain open until the goal is reached. To the extent that this was labeled an option in the opinion, it was an option open to non-whites. If a sufficient number can be found who are qualified they should be admitted. Since the program is prospective, no one can now know how many non-whites there

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are who are qualified under these paragraphs.

There would appear to be no reason for an age limit qualification other than the age of 18.

The court adopts the proposal for a tripartite examining board.

If it be true that many of the present membership reside outside the limits of New York City there is no reason why applicants should be restricted to New York City. The residency requirement should be increased to six (6) months to assure bona fide residency. Throughout the Program the qualifications should include a requirement of citizenship or an alien status which legally permits work in the United States.

4. Sections 4(b) and 33-36. These sections are approved except as noted below. What was said about goals in paragraphs 1 and 2 hereof is also applicable here.

Paragraph 33(b) should be deleted to the extent that it does not require examination. It appears to the court that all applicants should be required to take the aptitude test. It should not be left to conjecture as to whether the applicant has the aptitude to become a journeyman. If he does not pass the aptitude test there would appear to be no reason why he should be placed in an advanced position in the apprenticeship program. Furthermore all those placed in an advanced position should be so placed conditionally based upon classroom work and on job performance for a period to be determined by the coordinator not exceeding three months.

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Section 36 should not be deleted. It should be broadened to provide that nothing contained in the Program should be construed as preventing the Executive Board from adopting portions of the Program for the benefit of whites and other minorities provided that such plans do not interfere with the operation of this Program.

5. Sections 5, 6, 7, 8 and 9 are approved.

6. Section 10 is approved except with respect to age which shall be fixed at 18 (10(b)), and residency (10(c)).

7. Section 11 is supplemented to the extent requested in defendant Local 28's objection 8.

An examination of the application form annexed to Local 28's objections does not indicate that it is unduly complicated. An update of the informational items will, however, be required. The applicants should be informed in writing as to the place of examination with instructions as to how to reach the place and/or a map indicating its location.

The maximum examination fee of $25 is adopted provisionally. The defendants may apply to the Administrator for an increase upon a showing that such an increase is needed. Verified costs, i.e., vouchers verified by vendors, should be presented to show these costs. The evidence submitted by the City indicates that even this fee is prohibitive to application by a number of non-whites. An initial screening of applicants for the journeyman test ought to be held by the organizations through which they are produced and/or the Union. Results of the journeyman

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test of October 11, 1975 may indicate that some applicants who took the test were not qualified to do so. This results in wasted effort on everyone's part. Without suggesting that it has been done, we are not interested in testing a number of bodies but persons who are actually qualified but have been discriminated against in the past.

8. Paragraphs 15, 16 and 17 are approved. In 16(b) the proration of the initiation fee over a period of two years is unnecessarily restrictive. This should be amended to relate to income not time and should possibly be included in check off provisions. Thus perhaps 10% of the net check should be paid for the initiation fee until the fee is paid.

The objection contained in defendant Local 28's objection 12B has no place in this Program. It is the assumption of the court that any affirmative action provisions contained in the Program for non-whites with respect to 16(a) and (b) will equally be applicable to whites and other minorities.

9. Paragraph 17 of the plan is approved. With the additional language to be added as set forth in the City's letter of October 15, 1975, page 1.

10. Paragraphs 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28 and 29 are approved. The date for the December test is the 13th not the 11th as shown in the Program in paragraph 28.

11. The suggestion of the United States Attorney amending the first sentence of paragraph 30 as contained in his letter of October 10, 1975 at page 2 is approved. The deletion of the second sentence is approved and the insertion in its place

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of the City's paragraph in p. 3 of its letter of October 10, 1975 is approved.

12. Paragraph 31 is approved.

13. Paragraph 32 is amended so as to provide that the successful applicant will bear one-half the cost and JAC the other half. The importance of sound physical condition is such that the safety of all are involved in it. The cost as thus reduced to the applicant assuming a $34 maximum should be easily payable. The utilization of facilities other than those used by JAC is not acceptable since the nature of the examination is subject to too many variations and possible unethical practices.

As indicated earlier, paragraph 33(b) is in part deleted. The court believes that it is unfair to other applicants to exempt those claiming one year or more experience from the aptitude test. Furthermore if the test is as job-related as it should be those with the experience should have no difficulty with it. The preference to be granted should be based upon scores and work experience as determined by the coordinator. The number to be admitted should be determined by the Administrator based upon the certification by the coordinator and the needs of the apprentice program at any given time. This will require rewriting paragraphs 33 and 35 and possibly paragraph 31(b).

14. With respect to the Union's objections to the adoption of a rotation system of employment for apprentices, it is suggested that the adoption of such a system will motivate more apprentices to continue in the trade and will eliminate the probability that the upper classmen apprentices, who may

be mostly white, will be preferred over lower classmen who will, it is hoped, be significantly non-white. The court finds these two reasons sufficiently persuasive to adopt the program during the period of transition to the 29% goal.

15. With respect to paragraph 37 the court agrees that telephonic requests for information should be excluded from the record keeping. Telephoners should, however, be informed that their requests should be made in writing and a form for this purpose should be sent to them with regard to each of the categories mentioned in this paragraph.

The submission of these records once every three months during the first year of the Program and thereafter every six months is approved.

16. Sections 39, 40, 41, 42, 43, 44 and 45, 46, 47, 48 are approved as they are set up in the plan.

17. It should be noted by the parties that in the court's concept of the role of the Administrator, he is not a neutral person. He is the executor of the order and judgment of the court and its alter ego and, to that extent, he is partisan to the letter and spirit of the court's judgment. It has been brought to the attention of the court that numerous small harassing tactics have been utilized during the period from the date of the judgment to this date. A continuation of such practices is proscribed.

18. It appears that the major source of journeymen will ultimately be the apprenticeship program. The court has

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found that the test as administered was a major obstacle to non-white participation in this program. It would appear to the court that this may be so with respect to even validated tests. As a consequence, the Administrator is directed to incorporate in the program a pre-examination study group program to be conducted by the coordinator so as to familiarize all applicants with the type of test to which they will be exposed.

19. In the contemplation of the court the 29% figure reached in the judgment may result by the time the deadline is reached, in a lesser number of non-whites, than estimated at the time of the judgment, assuming an increase in attrition of Union membership due to the economy or other factors not now foreseeable. Thus accurate reporting of membership is an essential part of the Program.

The corrections and clarifications contained in the United States Attorney's letter of October 10, 1975 as applicable are adopted and approved.

The Administrator is directed to redraft the Program in accordance with this memorandum and order. Oral argument is denied as being unproductive.

SO ORDERED.

Dated: New York, New York

October 23, 1975

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U. S. D. J.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, and THE CITY OF NEW YORK,

Plaintiffs,

-against-

LOCAL 638...
LOCAL 28 OF THE SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL 28 JOINT APPRENTICESHIP COMMITTEE ...
SHEET METAL AND AIR-CONDITIONING CONTRACTORS' ASSOCIATION OF NEW YORK CITY, INC., etc.,

Defendants.

LOCAL 28,

Third-Party Plaintiff,

-against-

NEW YORK STATE DIVISION OF HUMAN RIGHTS,

Third-Party Defendant.

LOCAL 28 JOINT APPRENTICESHIP COMMITTEE,

Fourth-Party Plaintiff,

- against-

NEW YORK STATE DIVISION OF HUMAN RIGHTS,

Fourth-Party Defendant.

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AFFIRMATIVE ACTION PROGRAM AND ORDER

AFFIRMATIVE ACTION PROGRAM

Introduction

1. This Affirmative Action Program ("Program") is adopted pursuant to the Decision and Order dated July 18, 1975 and the Order and Judgment dated August 28, 1975 and entered in this action on September 2, 1975 ("Order and Judgment"). The goal of this Program is to assure that the

non-white* membership in Local Union No. 28 of the Sheet Metal Workers' International Association ("Local 28") reaches a minimum level of 29% b July 1, 1981; to assure that substantial and regular progress is made toward this goal in each year prior to 1981; and to assure that non-white members of Local 28 and non-white apprentices of Local 28 share equitably in all employment opportunities afforded to members of Local 28.

2. For the purpose of reaching the above goal of 29% by July 1, 1981 this Program establishes as interim percentage goals for the non-white membership of Local 28 the following:

July 1, 1976	10%
July 1, 1977	13%
July 1, 1978	16%
July 1, 1979	20%
July 1, 1980	24%

Each of the above percentages shall be measured against the total membership of Local 28 as of each interim goal date respectively and the final goal date. For the purpose of measurement, total membership shall include all journeyman members, all pensioners** who have been employed as sheet-metal workers within the last three years, and all members or participants in the Local 28 Apprentice Program ("Apprentice Program"). The parties to this action and the Administrator are to implement this Program so that these interim goals may be attained. The Administrator shall periodically review the progress toward the attainment of these goals and

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* "Non-white" as used in the Program means black and Spanish surnamed individuals.

** "Pensioner" as used in the Program means any individual who receives benefits from the Local 28 pension program.

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take such action as he is empowered to take under the Order and Judgment to assure their achievement.

3. Admission to Journeyman membership in Local 28 shall be attained only through the following procedures:

a) Successful completion of a 'hands-on' journeyman test administered pursuant to Paragraphs 5-14; or

b) establishment of proof of the required experience in the sheetmetal trade pursuant to Paragraph 15; or

c) successful completion of the Local 28 Apprentice Program; or

d) transfer in accordance with the Sheet Metal Workers' International Union Constitution and Ritual; or

e) organization of non-union shops.

4. Membership in the Apprentice Program shall be obtained only through the following procedures:

a) successful completion of an apprentice aptitude test as set forth in Paragraphs 21-32; or

b) entry with advanced standing as set forth in Paragraphs 33 through 36.

Admission to Journeyman Status

5. Under the supervision and with the approval of the Administrator, Local 28 shall administer a 'hands-on' journeyman's test on October 11, 1975 designed to test fairly and in a non-discriminatory manner the skills needed for a journeyman sheet metal worker. This test and its grading shall be in substance the equivalent of the 'hands-on' portion of journeyman's test given by Local 28 in

November, 1969 as revised by a sheetmetal expert provided by the plaintiffs or the New York State Division of Human Rights. Disputes as to any proposed revisions shall be resolved by the Administrator. There shall be a filing fee of $25 for this test.

6. Local 28 shall undertake a program of publicity and advertising and prepare, make available, and process applications relating to the October 11, 1975 'hands-on' journeyman's test in accordance with the standards and conditions set forth heretofore by the parties and the Administrator. The administration and grading of the test shall be under the overall supervision of the Administrator and shall be accomplished and recorded in such a manner as to facilitate the professional development and validation of future 'hands-on' journeyman's tests.

7. Under the following conditions all persons who receive a passing grade in the test described in Paragraphs 5 and 6, and who are physically fit for sheetmetal work shall be eligible for admission to full journeyman membership in Local 28 as follows:

a) all non-white applicants who receive a passing grade, up to a total of 200 such applicants, shall be admitted to journeyman membership by December 1, 1975 in accordance with and subject to the provisions of Paragraphs 16-18 of the Program. In the event that more than 200 non-white applicants receive a passing grade and elect to exercise their rights to admission to journeyman

membership under this Program, the 200 non-whites with the highest grades shall be admitted by December 1, 1975; the remaining non-white applicants shall be admitted in accordance with the provisions of sub-paragraph (b) of this paragraph;

b) white applicants who receive a passing grade shall be placed on a list and ranked in descending order on the basis of their grades on the examination.

i) white applicants shall be selected for admission in the order of their ranking on the above described list on the basis of a ratio to the non-whites admitted pursuant to section (a) of this Paragraph. Said ratio shall be agreed upon by the parties, but in no event shall the ratio be less than one non-white for every white. Such ratio shall be designed with the purpose of implementing the interim goals set forth in Paragraph 2. If the parties cannot agree on a ratio by November 10, 1975 the Administrator shall establish such ratio by November 15, 1975.

ii) all applicants who receive a passing grade but who are not admitted

pursuant to subparagraph (a) or section (i) of subparagraph (b) may be ordered admitted to journeyman membership by the Administrator at a time deemed suitable by him. White applicants who have received a passing grade and who are not admitted by March 1, 1976 shall be eligible for a selection priority over other white applicants qualified by the journeyman's test to be held in the Spring of 1976, or subsequent tests. Non-white applicants who have received a passing grade and who are not admitted pursuant to subparagraph (a) shall be admitted by July 1, 1976, if they so elect.

8. Local 28 shall administer a non-discriminatory, 'hands-on' journeyman's test under the overall supervision and approval of the Administrator in the Spring of 1976 and at least once a year thereafter. The Administrator, after consultation with the parties, may apply to the Court to decrease the frequency of the tests consistent with the requirements of the interim goals set forth in Paragraph 2.

9. The journeyman's 'hands-on' tests administered pursuant to Paragraph 8 shall be professionally developed and validated in accordance with EEOC Guidelines. Within a reasonable time before the administration of each test (which shall not be less than four weeks unless good cause is shown), Local 28 shall furnish counsel for the parties and the Administrator with (i) a copy of a report demonstrating

the validity of the test and (ii) a copy of the test to be administered, provided that counsel for the parties and the Administrator shall not distribute or disclose the contents of the test to any individual or organization except for the purpose of professional validation thereof.

10. All qualified applicants shall be eligible to take the 'hands-on' journeyman test specified in this Program. A qualified applicant is defined as follows: any person who

a) has or will have attained the age of 18 by the date of the test, and

b) is a citizen or a lawful permanent resident alien legally entitled to work in the United States, and

c) has resided in New York City or the counties of Westchester (N.Y.) Nassau (N.Y.) Suffolk (N.Y.), Passaic (N.J.) Bergen (N.J.) Hudson (N.J.) Union (N.J.) or Essex (N.J.) for six (6) months prior to the filing of an application, and

d) has one year of sheet metal work experience including but not limited to employment as a member in any branch of Local 400 of the Sheet Metal Workers International Association, sheet metal experience in the Armed Forces or vocational education or training related to the skills of a journeyman sheet metal worker.

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Persons presently registered or recently registered in the Local 28 Apprentice Program or any other recognized apprentice program affiliated with the Sheet Metal Workers' International Association are not eligible.

11. Subject to the approval of the Administrator, Local 28 shall develop a standardized application form for the 'hands-on' journeyman's test. Such forms shall include only the following:

a) provisions for the name, address, telephone number, social security number, citizenship or lawful resident alien status, residency, record of convictions, age, sex and race or ethnic identification of the applicant (with a notation that information regarding race or ethnic identification is required solely for the purpose of compliance with the court order herein and the regulations of the United States Equal Employment Opportunity Commission), and previous sheet metal experience.

b) information regarding the eligibility requirements, fee, date, time, location, and nature of the 'hands-on' journeyman's test.

12. Local 28 shall make available an application form for the 'hands-on' journeyman's test and a short description of the nature of the test in the following manner:

a) at the offices of Local 28;

b) by mail in response to inquiries and requests made by mail;

c) in bulk to plaintiffs, City

Department of Employment, the New York State Employment Service, Recruitment and Training Program, Inc., Fight Back, and the other governmental or community agencies listed in Appendix A as amended from time to time.

Completed applications for the test shall be accepted by mail or delivery in person at the offices of Local 28. Local 28 may establish, with the approval of the Administrator, a suitable cut-off date for the acceptance of applications. Local 28 may establish a fee for the taking of the 'hands-on' journeyman test consistent with the cost of administering such a test. Such fee shall be provisionally, $25.00. Local 28 may apply to the Administrator for an increase upon good cause shown. Applicants shall be informed, in writing, as to the place of examination with instructions as to how to reach the place and/or a map indicating its location.

13. The 'hands-on' journeyman test shall be graded by a Board of Examiners consisting of three members knowledgable in Sheet Metal. Said Board shall be comprised of a representative chosen by Local 28, a representative chosen by the Administrator, and a representative chosen by the Plaintiffs and the State Division of Human Rights. Such Board shall act by majority vote. Said Board of Examiners shall employ the passing grade level developed pursuant to the validation procedures set forth in Paragraph 9. All applicants shall be advised of their status by first class mail within 30 days of the test. Non-whites who fail the test shall be advised of their possible eligibility for

advanced standing in the apprenticeship program.

14. (a) A qualified non-white applicant who passes the test and is physically fit to perform sheet metal work shall be admitted to journeyman status in Local 28 within 60 days of the test unless the applicant elects to defer admission pursuant to Paragraph 19.

(b) A qualified white applicant who passes the test and is physically fit to perform sheet metal work shall be admitted to journeyman status in Local 28 in accordance with the following procedures:

(i) no later than 30 days prior to the test the parties shall attempt to agree on an appropriate ratio of non-whites to whites to be admitted to journeyman status. This ratio will be established with the purpose of fairly implementing the interim and final goals set forth in Paragraphs 1 and 2 but in no event shall said ratio be less than one non-white for every white. If no agreement is reached by the time specified, the Administrator shall establish the ratio within 15 days thereafter.

(ii) in accordance with the above ratio white applicants shall be admitted on the basis of the highest scores achieved on the 'hands-on' journeyman test;

c) To the best of their ability the parties and the Administrator shall endeavor to set forth on the application form the most accurate estimate of the opportunities available to whites based on the number of preferred candidates pursuant to Paragraph 7 (b), the number of expected non-white candidates, and past experience.

15. Commencing January 1, 1976 there shall be established a program for admission to Local 28 journeyman membership of non-whites who have had four years experience,

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obtained in the United States or elsewhere, in sheet metal work or employment reasonably related or similar to sheet metal work, including experience in the Armed Forces, or vocational training related to the skills of a sheet metal worker. Persons eligible for admission under this program must,

a) be a resident of New York City, or the counties of Nassau (N.Y.) Suffolk (N.Y.) Westchester (N.Y.), Bergen (N.J.) Passaic (N.J.) Essex (N.J.) Union (N.J.) or Hudson (N.J.) for six (6) months prior to application; and

b) be age 18 or over; and

c) be physically fit to perform sheet metal work; and

d) establish to the satisfaction of a majority of a board of three members knowledgable in sheet metal work, comprised of a representative chosen by Local 28, a representative chosen by the Administrator, and a representative chosen by the plaintiffs and the State Division of Human Rights that the applicant has the requisite sheet metal experience; and

e) be a citizen or lawful permanent resident alien legally entitled to work in the United States.

The Administrator, after due consultation with all the parties, shall establish procedures for application to this

program, for investigation and verification of the criteria set forth in subparagraphs (a) through (e), and for the timing and conditions of admission. Appropriate publicity for the program shall be undertaken at the direction and with the approval of the Administrator.

16. (a) Upon proper application, a non-white eligible for admission to journeyman membership in Local 28 pursuant to Paragraphs 5 through 15 or Paragraph 35(e) of this Program may request of Local 28's Executive Board that the Local 28 initiation fee be reduced pursuant to the provisions of Paragraph 22(d) of the Order and Judgment. Within 5 days of receipt of such application, the Local 28 Executive Board shall render a decision on the application in writing and notify the applicant, the Administrator and the parties of the disposition of the application (the notification to the Administrator and the parties shall include the name and address of the applicant). If such application is denied in whole or in part, or is not acted upon within five days of its receipt by the Executive Board of Local 28, an application may be made to the Administrator who shall either grant or deny the request in writing after duly considering all the factors set forth in Paragraph 22(d) of the Order and Judgment. In considering such an application the Administrator may require the submission of such information, documents, or other data from either Local 28 or the applicant as he deems necessary.

(b) Upon proper application a non-white eligible for admission to journeyman membership in Local 28 pursuant to Paragraphs 5 through 15 or Paragraph 35(e) may request of the Local 28 Executive Board that payment of the Local 28 initiation fee commence with employment and be payable on a pro rated basis, each payment not exceeding 10%

of the net check, and payable only during periods of employment until the fee is paid. Within 5 days of the receipt of such application the Local 28 Executive Board shall render a decision on the application in writing and notify the applicant, the Administrator and all parties of the disposition of the application (the notification to the Administrator and the parties shall include the applicant's name and address). If such application is denied in whole or in part or not acted upon within 5 days of its receipt by the Executive Board of Local 28, an application may be made to the Administrator who shall either grant or deny the application in writing. The decisions of the Executive Board of Local 28 and the Administrator shall be made having duly considered the financial circumstances of the applicant.

17. (a) At any time after an application pursuant to Paragraph 16 has been pending with the Administrator for more than 5 days a non-white eligible for admission to journeyman membership in Local 28 pursuant to Paragraph 5 through 15 or Paragraph 35(e) of this Program shall be admitted conditionally to journeyman membership upon payment of $56 dollars and one month's dues pending the determination of the Administrator which shall be made within 30 days of the date of the application to the Administrator. During such conditional membership an applicant will be entitled to all the rights and privileges of regular journeyman membership.

(b) If a conditional member is terminated without becoming a regular journeyman member of Local 28 he shall be entitled to a return of any dues paid in advance for any month in which he was not employed and, if he was not employed during his conditional membership, he shall also

be entitled to a return of any payment made toward the initiation fee.

18. The granting of any application pursuant to Paragraph 16 shall not diminish any rights or privileges accruing to journeyman membership in Local 28.

19. A person eligible for admission pursuant to Paragraphs 5 through 14 shall be permitted to defer such admission for up to six months from the time he is first entitled to be admitted. During such period, a person who has elected to defer may apply to the Administrator for further deferral of admission for up to another 12 months. If an applicant invokes his right of deferral he shall be admitted, on the same terms and conditions as he was previously entitled, within 30 days of written notice to Local 28 that he seeks to be admitted.

20. Local 28 shall issue "permits" or "identification slips" only with the express written consent of the Administrator, and pursuant to Paragraph 22(f) of the Order and Judgment.

Apprentice Program

21. The Local 28 Joint Apprenticeship Committee ("JAC") shall maintain an apprentice program of four years duration or less. The terms and conditions of the apprentice program shall be as set forth in the Collective Bargaining Agreement ("Standard Form of Union Agreement ... between Local ... and Sheet Metal Contractors."), the Local 28 Joint Apprenticeship Trust and Indenture, and the rules and regulations thereunder except where modified by the Order and Judgment, the provisions of this Program, or order of the Administrator pursuant to his powers under the Order and Judgment.

22. The apprentice program shall indenture no less than 300 apprentices by July 1, 1976 of which no less than 100 apprentices shall be indentured by February 2, 1976. No less than 200 apprentices shall be indentured in each year thereafter up to and including 1981. Said numbers shall include those apprentices admitted with advanced standing. The JAC may indenture apprentices in two separate classes during a year.

23. Apprentices shall be assigned for employment in a ratio of not less than one apprentice for every four journeymen working of the aggregate journeymen employed. Seniority shall not be a criterion for employment, and apprentices shall be rotated for employment where necessary and feasible. The JAC shall make every effort to provide apprentices with classroom instruction, including evenings and Saturdays where necessary, during periods of unemployment, and shall credit such hours toward fulfillment of apprenticeship requirements. The JAC may authorize the accelerated advancement or graduation of any apprentice as it deems proper.

24. Upon successful completion of the Apprenticeship Program, apprentices shall be promptly admitted to full journeyman membership upon payment of the balance due of the initiation fee, if any, which upon application to the Local 28 Executive Board, may be paid on an installment basis for good cause shown, and subject to the procedures contained in Paragraph 16.

25. Applications shall be made available to and accepted from any qualified candidate. A qualified candidate is defined as follows: any person who is deemed physically fit for sheet metal work and who has or will have attained

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the age of 18 years by the date of indenture of the next scheduled apprentice class and who is not older than 25 years of age (for veterans of active military duty the age limit is extended one year for each year of such duty up to the age of 30) and for non-whites not over the age of 35 applying for advanced standing, and who is a citizen or permanent resident alien. For the apprentice aptitude test to be administered in November, 1975 only, JAC may require proof of completion of a tenth grade course of education. The JAC shall validate the tenth grade requirement before said requirement may be imposed for subsequent examinations.

26. With the approval of the Administrator, JAC shall develop a standardized application form for the Apprentice Program. The application form shall include information about the date of the next class of apprentices to be indentured, and shall require only the following information of the applicant:

a) Name, address and telephone number:
b) Birth date and age:
c) Social Security number;
d) Extent of education;
e) Sex;
f) Race or ethnic classification; (with a notation that this information is required solely for the purposes of compliance with federal anti-discriminations statutes);
g) military service;
h) convictions and pending criminal charges.
i) Citizenship or lawful permanent resident alien status.

27. Application forms for the Local 28 JAC

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Apprentice Program shall be available at the offices of the JAC during normal business hours and at the offices of the organizations listed in Appendix A at least 60 days before an examination. Application forms shall be made available by mail upon written request. Completed applications shall be accepted in person or by mail at the offices of the JAC. There shall be a filing fee of no more than $15.00. Application forms shall be made freely available to any governmental employment office and minority community organizations not listed in Appendix A upon request. The time for filing applications for a particular apprentice test may be closed by the JAC at a reasonable time (not to exceed three weeks) before the date of the examination.

28. An apprentice aptitude test shall be given on December 13, 1975 and at least once yearly thereafter at a date, time and location approved by the Administrator. The test shall consist of the following professionally developed and validated components: (1) a basic "read and follow directions" test designed to ascertain an applicant's ability to master and understand those written and verbal instructions, directions, and other communications necessary to participate in the Apprentice Program at the first year level; and (2) a mechanical comprehension test similar in substance and scope to that mechanical comprehension test administered by JAC in April 1969. There shall be professionally developed and validated a qualifying score on the "rea and follow directions" test designed to reflect the minumum ability necessary to participate in the Apprentice Program at the first year level. The JAC may apply to the Administrator to give a math test as part of the apprentice aptitude test, and such test may be given upon good cause

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shown. Such math test shall be professionally developed and validated as to content and qualifying score in such manner as to reflect the minimum ability necessary to participate in the Apprentice Program at the first year level.

29. Within three weeks of the administration of an apprentice entrance test, JAC shall provide the Administrator and all parties with:

(a) the names, race identification, raw scores and rank of all candidates on all tests; and

(b) the mean and median scores on all tests of all identifiable racial and ethnic groups among the candidates.

30. Persons selected to be indentured as apprentices pursuant to Paragraph 22 shall be selected in accordance with a ratio of non-whites-to-whites which shall be established by agreement of the parties within 30 days prior to the tests, or by the Administrator within 15 days thereafter if the parties fail to agree.* This ratio will be established with the purpose of fairly implementing the interim and final goals set forth in Paragraphs 1 and 2 but in no event shall said ratio be less than one to one. For the purpose of assuring that white applicants are accorded an opportunity to be accepted into the Apprentice Program in reasonable numbers, the parties and the Administrator shall use their best efforts to assure that the total population of the program shall not exceed 60% non-white individuals, and that an individual term or class shall not exceed 70%

* The parties shall agree by November 14, 1975, what the ratio shall be for the classes to be indentured in February and June 1976. If no agreement is reached, the Administrator shall establish the ratio by November 21, 1975.

non-white individuals.

31. In fulfillment of JAC's and Local 28's obligations under Paragraphs 22 and 30, apprentices chosen by means of the apprenticeship entrance test shall be selected from those who meet or exceed the qualifying score on the "read and follow directions" test in the following manner:

(a) the white apprentices shall be selected on the basis of the highest scores received on the mechanical comprehension test among the white eligible qualified candidates;

(b) the non-white apprentices shall be selected on the basis of the highest scores received on the mechanical comprehension test among non-white eligible qualified candidates subject to the provisions of paragraph 35.

32. Persons selected for the Apprentice Program may be required to appear for orientation and a physical examination prior to being indentured. The cost of physical examinations are to be borne one half by successful applicants and one half by the JAC. Additional persons may be invited to orientation and a physical examination by Local 28 JAC if that appears desirable. Persons selected in accordance with the above procedures shall be indentured as apprentices unless such indenturing is waived by them, or they are certified physically unable to perform sheet metal work by a medical practitioner licensed in New York State.

ADVANCED APPRENTICES

33. There shall be established by the JAC procedures for the admission and advanced placement in the

Apprentice Program of non-white apprentices who have experience in sheet metal work or trade education but cannot perform at journeyman level. Applicants for advanced placement shall have at least six months experience in sheet metal work or trade education, be physically fit and shall be not less than 18 years old or more than 35 years old by the date of indenture of the next scheduled apprentice class. For such person applying to be indentured in February and July, 1976 only, the JAC may require proof of completion of a tenth grade course of education by that date. Such requirement must be validated for subsequent utilization.

34. The Training Coordinator of JAC shall evaluate the experience of all applicants for advanced standing and shall make placement to the appropriate grade level. The grade level assigned shall be conditional for a period to be determined by the coordinator, not exceeding three months, based upon classroom work and on the job performance. Applicants who challenge the grade level assigned shall be advised of their right to appeal to the Administrator.

35. a) The Administrator shall determine the number of advanced apprentices to be admitted from the lists resulting from each test, based upon the needs of the apprenticeship program at any given time and the number of applicants eligible for advanced standing as certified by the coordinator.

b) Apprentices who meet the requirements of Paragraph 33 shall be selected for advanced standing in the following manner:

(i) those whose ranking on the apprenticeship aptitude examination qualifies them for acceptance into the apprenticeship program pursuant to Paragraphs 22

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and 30 shall be selected in accordance with their ranking and admitted with advanced standing, subject to the number determined by the Administrator pursuant to subdivision (a) of this paragraph.

(ii) if there are insufficient apprentices who qualify for advanced standing selected by the procedure contained in subdivision (b)(i) of this paragraph to satisfy the number determined by the Administrator, additional apprentices to reach this number shall be selected in ranked order, from those who are over 25 years of age and whose score on the apprenticeship aptitude examination places them below the number otherwise selected pursuant to Paragraph 22.

c) The number of apprentices admitted with advanced standing under subdivision (b)(i) of this paragraph shall be included in the number of apprentices selected pursuant to Paragraph 22 and computed in the total of non-white apprentices selected on the basis of the ratio established pursuant to Paragraph 30. The numbers of apprentices admitted with advanced standing under subdivision (b)(ii) of this paragraph shall not be included in the number of apprentices selected pursuant to Paragraph 22 or computed in the total of non-white apprentices selected on the basis of the ratio established pursuant to Paragraph 30.

d) An advanced apprentice shall be entitled to all rights, privileges and other benefits including work referral, pay, instruction, and supervision accruing to regular apprentices at the same level of training.

e) Apprentices admitted with advanced

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standing pursuant to Paragraphs 33 through 35 who successfully complete the apprenticeship program may make the applications provided for in Paragraph 16 of this Program.

f) Advanced apprentices assigned for work may be utilized to satisfy City and City-assisted contract requirements for the employment of minority trainees.

36. The coordinator shall develop a pre-examination study group program so as to familiarize all applicants for the Apprenticeship Program with the type of test that they will be given. All applicants shall be notified in writing at least two weeks in advance of the apprentice test that the study program is available to them. Such notice shall contain the date, time, and location of the study group meetings. The meetings shall be held in the evening after 6:30 P.M. Within two weeks of the effective date of this Affirmative Action Program, the Coordinator shall submit a detailed program including but not limited to teaching methodology, program materials, and organization of the groups.

RECORDS

37. In addition to any other records or lists required to be maintained under the terms of this Program or the Order and Judgment, Local 28 and JAC, as the case may be, shall maintain separately for whites and non-whites, records and lists containing the following information, beginning with the effective date of this Program.

a) Persons who request an application for or apply to take the "hands-on' journeyman's test described in Paragraphs 5 and 8;

b) Persons who take the "hands-on'

journeyman's test described in Paragraphs 5 and 8;

c) Persons who pass the 'hands-on' journeyman's test described in Paragraphs 5 and 8;

d) Persons who applied for journeyman admission on the basis of experience, described in Paragraph 15;

e) Persons who are admitted, and those rejected, for journeyman membership on the basis of experience, described in Paragraph 15;

f) Persons who seek or apply to transfer into Local 28 from an affiliated sister local union;

g) Persons who inquire of Local 28 about the possibility of transferring into Local 28 from an affiliated sister local union;

h) Persons who inquire of Local 28 as to the availability of work opportunities with or through Local 28, including but not limited to inquiry about or seeking "permits" or "identification slips";

i) Persons to whom "permits" or identification slips" are issued or work opportunities with or through Local 28 are otherwise made available.

j) Persons who contact Local 28 or JAC seeking sheet metal work;

k) Persons who are employed as sheet metal workers or apprentices by Local 28 contractors.

l) Persons working in sheet metal shops at the time they are organized by Local 28;

m) Persons who are reinstated to journeyman membership or to the Apprentice Program;

n) Non-whites who apply for advanced standing in the apprenticeship program described in Paragraphs 33-35;

o) Non-whites who are granted advance standing in the apprenticeship program and the standing granted as described in Paragraphs 33-35;

The records and lists specified in subsection (a) through (o) of this Paragraph shall contain the name, address, race, or national origin, union affiliation, if any, of each individual listed therein, as well as the date of the application, test, inquiry, contact, or employment (and the name of the contractor, where applicable), and the disposition with reasons, of each such application, test, inquiry, contact or employment. Copies of these records and lists shall be submitted to counsel for the parties and the Administrator at least once every three months.

Said records and lists may exclude telephonic requests for information. However, telephoners should be informed that their requests should be made in writing, and a form for this purpose shall be sent to the telephoner.

38. Local 28 or JAC, as the case may be shall submit the following data to the Administrator and parties

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at the time specified.

a) the name and race identity of persons admitted into (i) journeyman status in Local 28 or (ii) apprentice status in the Apprentice Program, within 5 days of such admission;

b) on January 1 and July 1 of each year the total number of (i) journeyman members of Local 28, (ii) pensioner members of Local 28 (as defined in Paragraph 2), and (iii) apprentices. Such reports shall include the percentage of non-whites in each group.

39. The JAC shall maintain complete records of all applications and other material concerned with the selection and work records of apprentices. These records shall include but not be limited to an applicant log for each examination showing the name, race, date of birth of each applicant, dates of completion of each step in the application procedure, disposition of each step in the application procedure, and disposition of each application. All such records shall be made available for inspection and copying by the plaintiffs at reasonable intervals during normal working hours or at other mutually convenient times. In addition, records shall be submitted to the Administrator and plaintiffs as follows:

a) Prior to each apprentice entrance test and within 7 days of the closing of the application procedure the JAC shall submit a report including the following information for each person who filed or requested an application for that apprentice examination: name, address, telephone

number and race or national origin, if known for those who request applications.

b) Within 20 days after indenturing a class of apprentices the JAC shall provide a report of the names and ethnic classification of all persons who were rejected during the application and testing period and the reason therefore and the names of all persons whose application became inactive and the reason therefore.

c) Every six months subsequent to the indenturing of a class of apprentices the JAC shall furnish a report giving the names of all non-white apprentices, the name(s) of contractors to which each was referred and the number of hours worked.

d) The Joint Apprenticeship Committee shall furnish the names of any non-white apprentices who are dropped from the Apprentice Program. Said information shall be furnished within twenty days from the date action is taken by the Joint Apprenticeship Committee. Said report shall contain the reason why the individual was dropped from the program and the steps taken by the Joint Apprenticeship Committee to retain the individual in the program. The report shall also include the training and employment history of the individual while he was in the program. The Joint Apprenticeship Committee shall furnish the names of all non-white apprentices who leave the program other than by action of the JAC. Such report shall contain the reason the apprentice has left the program as ascertained by an exit interview diligently attempted. Said information shall be furnished within twenty days from the time the JAC is notified that the apprentice has left the program.

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40. All records and lists required to be compiled by this Program shall be maintained for ten years and shall be made available for inspection and copying by the parties and the Administrator on reasonable notice during regular business hours or at other mutually convenient time without further order of the court.

Advertising and Publicity

41. The parties shall use their best efforts to disseminate accurate information to the non-white community of opportunities within Local 28 and the Local 28 apprentice program.

42. Prior to each "hands-on" journeyman's test and apprentice entrance test, at a time to be selected by the Administrator to insure full coverage and effectiveness, Local 28 (in the case of the "hands-on" journeyman's examination) and JAC (in the case of apprentice entrance tests) shall undertake a program of advertising and publicity, under the overall supervision of the Administrator, designed to inform the non-white community in New York City of the date, location, and nature of such examinations, the qualifications therefor and the opportunities available upon successful completion of the test. Additionally, the overall apprenticeship recruiting and publicity campaign shall include a component limited toward advanced apprentices. These campaigns may include print and electronic media, dissemination of material to community, government and minority organizations. The City of New York may provide space and opportunities for such publicity.

43. By March 1, 1976 Local 28 and JAC shall provide to the Administrator and the other parties a written plan of an effective general publicity campaign designed to

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inform the non-white community in New York City of non-discriminatory opportunities in Local 28 and the Local 28 apprentice program as provided in the Order and Judgment and this Program. The other parties shall have 30 days to comment upon the written plan and the Administrator, having considered all submissions, shall revise the plan if he deems necessary and shall order it into effect by May 1, 1976.

Work Referral

44. The Administrator shall conduct a study of the present Local 28 work referral system as described in the written statement submitted pursuant to Paragraph 21(g) of the Order and Judgment. This study shall be completed by June 15, 1976 and the Administrator shall submit to the parties such recommendations he deems necessary to assure that non-whites do not bear a disproportionate share of unemployment.

Resolution of Disputes

45. a) The Administrator shall hear and determine all complaints concerning the operation of the Order and Judgment and this Program and shall decide any questions of interpretation and claims of violations of the Order and Judgment and the Program, acting either on his own initiative or at the request of any party herein or any interested person. All decisions of the Administrator shall be in writing and shall be appealable to the Court.

b) Any party or any individual affected by this Program may make a complaint to the Administrator within thirty days after the situation complained of arises. The Administrator shall give the parties notice of such a complaint within five days and, where a hearing is in his

discretion warranted, expediously schedule such hearing.

General Provisions

46. The union and the JAC shall post conspicious notices, in language and at locations approved by the Administrator, advising individuals of their rights under this Program within 60 days after the Program is approved by the Court.

47. Nothing contained in the Program should be construed as preventing the Executive Board from adopting portions of the Program for the benefit of whites and other minorities provided that such plans do not interfere with the operation of this Program.

48. Except as modified changed or amended by the terms of this Program or order of the Administrator, Local 28 and JAC shall not change, modify or amend any aspect of the operation or content of the Apprentice Program, or the conditions or terms upon which an individual shall become a member of the Apprentice Program of Local 28 or entitled to work within the jurisdiction of Local 28.

49. At any time, any of the parties herein may apply to the Administrator and then to the Court for the purpose of seeking additional orders to insure the full and effective implementation of the terms and intent of this Program.

Dated: New York, New York
November 12, 1975

David Raff
DAVID RAFF, ESQ.
Administrator

SO ORDERED

/s/ Henry F. Werker
U.S.D.J.

Dated: November 13, 1975

APPENDIX A

New York State Division of Employment (Department of Labor)

Department of Employment of the City of New York

Bureau of Labor Services of the City of New York

Recruitment and Training Program, Inc.

Fight Back

Asian Americans for Equal Employment

Black Economic Survival

Regional Neighborhood Manpower Service Centers of New York City

New York City Board of Education (Public High School and Evening Trade Division)

Williamsburg Coalition

New York Urban League

National Association for the Advancement of Colored People

Puerto Rican Community Development Project

National Association for Puerto Rican Civil Rights

Citywide Coalition of Black, Hispanic, and Asians in Construction

New York Project Equality

Commonwealth of Puerto Rico

Opportunities Industrialization Center of New York, Inc.

Bedford-Stuyvesant Restoration Corp.

New York City Human Rights Commission*

New York State Division of Human Rights*

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*Send notices of exams, but no bulk application

Dec. 22 - Motion denied after argument - So ordered 12/22/75 HFW
Sept 6 - Application for stay denied after argument - So ordered 12/22/75 HFW

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, and THE CITY OF NEW YORK,

Plaintiffs,

-against-

71 Civ. 2877 (HFW)

LOCAL 638 . . . LOCAL 28 OF THE SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL 28, JOINT APPRENTICESHIP COMMITTEE . . . SHEET METAL AND AIR-CONDITIONING CONTRACTORS' ASSOCIATION OF NEW YORK CITY, INC., etc.,

Defendants.

NOTICE OF MOTION

LOCAL 28,

Third-Party Plaintiff,

Oral Argument Requested

-against-

NEW YORK STATE DIVISION OF HUMAN RIGHTS,

Third-Party Defendant.

LOCAL UNION 28 JOINT APPRENTICESHIP COMMITTEE,

Fourth-Party Plaintiff,

-against-

NEW YORK STATE DIVISION OF HUMAN RIGHTS,

Fourth-Party Defendant.

S I R S :

PLEASE TAKE NOTICE, that upon the Determination (denominated "MEMORANDUM") dated November 21, 1975, by DAVID A. RAFF, Esq., the

Court-appointed Administrator herein (annexed hereto and made a part hereof as Exhibit "A"), the letter dated November 21, 1975, addressed to the Administrator by counsel for the Plaintiff, EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (annexed hereto and made a part hereof as Exhibit "B"), the letter dated November 13, 1975, addressed to the Administrator by counsel for Plaintiff, THE CITY OF NEW YORK, (annexed hereto and made a part hereof as Exhibit "C"), and upon all of the proceedings heretofore had herein, the Defendants, SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL UNION NO. 28 and the LOCAL 28 JOINT APPRENTICESHIP COMMITTEE AND TRUST (herein "JAC"), will move this Court before the Honorable HENRY F. WERKER, United States District Judge, in Chambers 2904 of the United States Court House, Foley Square, Borough of Manhattan, City and State of New York, on the 22nd day of December, 1975, at 10:00 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for an Order setting aside the aforesaid Determination of the Administrator, directing that the applicants for the apprenticeship program administered by the JAC for classes commencing February 1, 1976 and July 1, 1976, respectively, be selected in a ratio of 3:2, non-whites to whites, solely on the basis of race and national orgin (Spanish surname) without regard to ranking in the apprenticeship examination or other qualifications, on the grounds that said Determination is unreasonable, improper and an unnecessary denial of due process to white applicants who are equally qualified or more qualified for the apprenticeship program.

PLEASE TAKE FURTHER NOTICE, that in accordance with the direction of the Court, answering papers, if any, are required to be served and filed on or before 12 noon, December 18, 1975.

Dated: New York, New York
December 11, 1975

Yours, etc.,

SOL BOGEN
Attorney for Defendant
Local No. 28 and Co-
Counsel for Defendant JAC
One Penn Plaza
New York, New York 10001
(212) 736-7570

TO: HONORABLE THOMAS J. CAHILL
United States Attorney
1 Saint Andrew's Plaza
New York, N.Y. 10007

Att: Taggart D. Adams, Esq.
Assistant United States Attorney

HONORABLE W. BERNARD RICHLAND
Corporation Counsel
Municipal Building
New York, N.Y. 10007

Att: Ellen Kramer Sawyer, Esq.
Assistant Corporation Counsel

HONORABLE LOUIS J. LEFKOWITZ
Attorney General
Two World Trade Center
New York, N.Y. 10047

Att: Dominick Tuminaro, Esq.
Assistant Attorney General

001405

DAVID RAFF
ATTORNEY AT LAW
SUITE 220
49-51 CHAMBERS STREET
NEW YORK, NEW YORK 10007

TELEPHONE {566-4874
{566-4875

November 21, 1975

MEMORANDUM

TO: Sol Bogen, Esq.
William Rothberg, Esq.
Taggart Adams, Esq.
Beverly Gross, Esq.
Dominick Tuminaro, Esq.

FROM: David Raff, Administrator

Re: Ratio for the December 13 Apprenticeship Test

As all counsel are aware the Affirmative Action Program and Order (hereinafter Program or AAP) dated November 13, 1975, required the parties to reach agreement by November 14 on the ratio of whites to non-whites for purposes of admission to the Apprenticeship Program. Since no agreement has been reached the responsibility falls to the Administrator to set the ratio.

I have reviewed the positions of Counsels for the Plaintiffs, in this matter (the defendants have failed to express their views on this issue), and I have determined that the appropriate ratio is to admit three non-whites, as defined in the Order and Judgment, for every two whites. The City has urged the 3:2 ratio while both the E.E.O.C. and the State Division have urged a 1:1 ratio. Having reviewed the figures in this matter, and having weighed the intent of the language of the Court's Memorandum and Order dated October 28 with regard to the accomplishment of goals, I find that the 3:2 ratio is appropriate and indeed, necessary in order to effectuate the intent of this Program. To rely upon the other methods of entry by non-whites to accomplish the goals is somewhat speculative at this point. However, I will not order that the first entry class be 70 non-white and 30 white as the City requests.

I take this opportunity to remind Local 28 of their responsibility under the Program, pursuant to Paragraph 13, to advise those who failed the journeyman test that they

may be eligible for advanced standing in the Apprentice Program. Such notice shall be sent immediately. Local 28 is to enclose with said notice a copy of the apprenticeship test application form and information sheet. The time for those persons to apply for the apprenticeship test is ordered extended to 5:00 P.M., December 5, 1975.

Additionally, Local 28 should be preparing, pursuant to Paragraph 15 of the AAP, a campaign to commence on or about January 1, 1976 to advise non-whites who have at least four years sheet metal experience that they may be eligible for direct entry to journeyman status.

W.R.

cc: Honorable Henry F. Werker

TDA:cbm
70-1674

November 21, 1975

David Raff, Esq.
49-51 Chambers Street
New York, New York 10007

Re: EEOC v. Local 28

Dear Professor Raff:

The EEOC suggests that the ratio to be selected pursuant to Paragraph 30 of the Affirmative Actinn Program be 1:1. We believe such a ratio is the fairest possible to all interested parties and persons, and, in addition, will both provide sufficient non-whites to meet the interim goals set forth in AAP Paragraph 2 and sustain the quality of applicants admitted to the Apprentice Program.

We have reviewed the letter of the Corporation Counsel dated November 13, but have had no communication with counsel for Local 28 or JAC. We agree with the figures set forth in Corporation Counsel's letter at page 2. However, we believe that while additional sources of non-white apprentices and journeymen are "speculative" they should not be totally ignored.

Our calculations and estimates are as follows:

	Total	Non-Whites
Current Journeyman, Apprentices and Pensioners (as defined in AAP)	3349	169
October Journeyman Test	36	17
	3385	186
Expected Attrition of Pensioners	-50	-0
	3335	186

001408

Estimated Entrances
up to July 1, 1976

Spring Journeyman Test	20	10
Four Year Experience	10	10
Advanced Apprentices	15	15
	3380	221
Regular Apprentices at 1:1	300	150
	3680	371

We believe the above estimates are reasonable and even conservative, and the figures, as a whole, show no urgent need to have a ratio more favorable to non-whites than 1:1.

Very truly yours,

THOMAS J. CAHILL
United States Attorney

By: _____
TAGGART D. ADAMS
Chief, Civil Division
Telephone (212) 791-0051

cc: Sol Bogen
One Penn Plaza
New York, New York

Rosenthal & Goldhaber
44 Court Street
Brooklyn, New York
Attn: William Rothberg

W. Bernard Richland
Corporation Counsel
Municipal Building
New York, New York
Attn: Beverly Gross

Louis Lefkowitz
Attorney General
Two World Trade Center
New York, New York
Attn: Dominick Tuminaro

The City of New York

LAW DEPARTMENT
MUNICIPAL BUILDING
NEW YORK, N. Y. 10007

W. BERNARD RICHLAND,
Corporation Counsel

November 13, 1975

David Raff, Esq.
49-51 Chambers Street
New York, N.Y. 10007

Dear Mr. Raff,

The City proposes that the ratio you establish for apprentices to be selected from the results of the December 13th test be no less than three non-whites for every two whites. This proposal is based upon the figures supplied to us by Mr. Bogen, as they relate to the 10% interim goal established by the Court for July i, 1976.

These figures show that to meet the first year goal of 10%, approximately 60% of the apprentices to be admitted by July 1, 1976 must be non-white. This percentage alone breaks down into a 3:2 (non-white/white) ratio. It is submitted that in view of the strong remedial program ordered by Judge Werker, which by its terms includes a non-white preference, each effort during the year to open union and apprenticeship membership should be treated as an independent effort to reach the 10% goal. This should certainly be the objective of the most significant effort in opening up union membership to non-whites, i.e., the apprenticeship exam.

Accepting this premise, the only acceptable ratio is three non-whites for every two whites. This ratio is also preferable since it guarantees to non-whites, the class sought to be protected by the preference, the best oppotunity for ultimately meeting the 10% goal. Any other ratio, e.g., 1:1, reduces this guarantee and, thus, fails to meet the district court's directives to meet the Program's goals as quickly as possible.

The argument that a 1:1 ratio is more easily sustainable on appeal is meritless. Assuming arguendo, the Affirmative Action Program is appealed, the 3:2 ratio is easily defensible as that ratio most in line with all the directives of the Program. Additionally,it is extremely unlikely the 3:2 ratio would or could be disturbed unless the underlying concepts of the Affirmative Action Program were to be completely rejected.

Following is an elaboration of our computations and reasoning:

Our computations are as follows:

current journeymen	2877		
pensioners	236	(employed in last 3 years)	
current apprentices	236		
		3349	
apprentices to be admitted by 7/1/76		300	
passed 10/11/journeyman's test		36	(all to be admitted)
attrition		50	
		3635	
July 1976 non-white goal		.10	
			364
current non-white journeymen	119		
current non-white apprentices	50		
non-whites from 10/11/75 test	17		186

Non-whites required to meet July 1976 goal = 178

178 = 59.3% of the 300 apprentices to be admitted by July 1, 1976, or approximately 3 non-white apprentices for every 2 white apprentices.

While it is possible that additional non-white persons may be obtained through the advanced apprentice program, through the 4-year experience admission, or through the journeyman's test to be given in the Spring of 1976, such sources are speculative at this time and it is impossible even to guess at the numbers that might be produced by these means. Moreover, as the Court forcefully stated in its October 23rd Memorandum, it is its intention that every diligent effort be utilized to achieve the Program's goals as early as possible. Implicit in this is a rejection of the concept that the interim goals are to be viewed as a ceiling. If methods of entry other than the apparentice test do produce non-whites, this would only mean we have made an early start toward achieving the next year's goal.

In view of the fact that Judge Werker has ordered a remedial program which includes both a preference and a first year goal of 10%, it is difficult to conceive how the parties or the Administrator can adopt a ratio of less than 3:2, based on the numbers above. A 1:1 ratio would produce only 9.1% non-whites by July, 1976, and cannot be justified by possibilities unknown at this time. The only nearly ascertainable group is the few who scored between 50 and 60% on the October 11th test, and the addition of this small number of non-whites would not meaningfully affect the figures.

Whatever ratio is finally adopted for the December 13th test group, the City suggests that 70 of the 100 apprentices to be indentured in February be non-white and the difference be adjusted in the July class. This would be a dramatic demonstration of good faith and hopefully would aid in offsetting the negative reputation of the Union which was unfortunately reinforced both by the picketing on October 11th and by the demonstration on November 6th at which the union's leaders were conspicuous.

Very truly yours,

Beverly Gross

Beverly Gross
Assistant Corporation Counsel

Ellen Sawyer

Ellen Sawyer
Assistant Corporation Counsel

cc: T. Adams
D. Tumimaro
W. Rothberg
S. Bogen

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION and THE CITY OF NEW YORK,

Plaintiffs,

-against-

LOCAL 638 ... LOCAL 28, SHEET METAL WORKERS, et al.,

Defendants.

----------x

71 Civ. 2877(HFW)
AFFIDAVIT IN OPPOSITION TO MOTION OF LOCAL 28 AND THE JAC UNION TRUSTEES TO SET ASIDE THE 3:2 RATIO FIXED BY THE ADMINISTRATOR FOR APPRENTICESHIP SELECTION FROM THE DECEMBER 13, 1975 EXAM

STATE OF NEW YORK)
: SS.:
CITY OF NEW YORK)

ELLEN KRAMER SAWYER, being duly sworn, deposes and says:

1. I am an attorney in the office of W. BERNARD RICHLAND, attorney for plaintiff, City of New York, and as such, I am in charge of this case, and am familiar with the facts set forth herein.

2. I make this affidavit in opposition to the motion of Local 28 and the JAC Union Trustees to set aside the determination of the Administrator to use a ratio of 3 non-whites to every 2 whites for purposes of admission to the apprenticeship classes to be indentured in February and June 1976.

3. In accordance with paragraph 21(c) of the Order and Judgment of this Court, entered September 2, 1975, and paragraph 28 of the Affirmative Action Program and Order (hereinafter the Program), dated November 13, 1975, an examination for admission to the apprenticeship program was held on Saturday, December 13, 1975. Pursuant to

paragraph 22 of the Program, 300 persons are to be selected from this examination to be indentured as apprentices by July 1, 1976, of which number no less than 100 persons shall be indentured by February 2, 1976. Paragraphs 28 and 31 of the Program further provide that non-whites shall be ranked for selection in order of their scores among the non-white candidates on the mechanical comprehension tests given on December 13, 1975. White candidates are to be similarly ranked for selection. (For present purposes, we are not here talking about paragraph 35(b)(ii) of the Program allowing the Administrator, upon certain conditions, to make an additional selection of advanced apprentices from that group of applicants who are over 25 years of age and whose ranking positions are below that group of non-white apprentices originally selected for the 300 person program pursuant to paragraph 22 of the Program). Actual selection of successful candidates is governed by paragraph 30 of the Program providing that the 300 persons to be indentured as apprentices by July 1, 1976 shall be selected in accordance with a ratio of non-whites to whites to be determined by agreement of the parties by November 14, 1975, 30 days prior to the apprentice examination or, failing such agreement, by the Administration no later than November 21, 1975.

4. For future examinations for admission to the apprenticeship program, the selection ratio of non-whites to whites shall be, pursuant to paragraph 30 of the Program, similarly established by agreement of the parties within 30 days prior to the examination, or failing such agreement, by the Administrator at least 15 days prior to the examina-

tion. (The ratio of non-whites to whites for the selection from the journeyman tests to be administered yearly by Local 28 is to be similarly determined by the parties 30 days prior to the test, or failing such agreement, by the Administrator 15 days prior to the examination. (See paragraph 14 (b) (i) of the Program.))

5. Paragraphs 14(b)(i) and 30 of the Program order that for the December 13, 1975 apprenticeship examination, as for all future examinations for apprenticeship and journeyman membership, the ratio "be established with the purpose of fairly implementing the interim and final goals set forth in Paragraphs 1 and 2 but in no event shall said ratio be less than one to one."

6. As to the accomplishment of interim and final goals, this Court directed in its Memorandum and Order dated October 23, 1975 that they be met as early as possible, implicitly rejecting the argument that the interim goals are to be viewed as a ceiling (Pltff's Exh. A, para. 3).

7. Further, as pointed out by this Court in its October 23rd Memorandum and Decision since the Program is prospective, no one can presently know the number of qualified non-whites for the various entry routes to membership in Local 28. (Exhibit A, para. 3). This statement is borne out by the contemplation in the Program that 200 non-whites

would be admitted to union membership from the October 11, 1975 journeyman test. See paragraph 7(a) of the Program. The actual results of that test yielded 36 successful candidates, of whom only 17 are non-white. (Defs' Exhs. B and C)

8. Based on the directives of the Program, and the intent of this Court as stated in its Memorandum and Order of October 23, 1975, as well as his review of the positions of counsels for the plaintiffs, the Administrator, exercising his broad powers to implement fully the Program and fulfilling his specific duties under the above cited paragraphs of the Program, notified counsel for the parties, by Memorandum dated November 21, 1975, that he had determined, the parties having failed to reach agreement, that the selection ratio for the December 13, 1975 apprenticeship examination should be 3 non-whites for every 2 whites (Defs' Exh. A) In his memorandum, the Administrator stated that he finds that the 3:2 ratio is "appropriate and indeed, necessary ... to effectuate the intent of this Program. To rely upon the other methods of entry by non-whites to accomplish the goals is somewhat speculative at this point." (Defs' Exh. A) The Administrator rejected the City's request that the class of 100 apprentices to be indentured by February 1976 be composed of 70 non-whites and 30 whites.

9. The position of the Equal Employment Opportunity Commission (EEOC), which was rejected by the Administrator, was that a 1:1 ratio would be "the fairest possible to all interested parties" and would provide "sufficient" non-whites to meet the interim goals and "sustain the quality of

applicants admitted to the Apprentice Program." (Defs' Exh. B) The EEOC stated it did "agree with the figures set forth in Corporation Counsel's [City] letter." However, the EEOC stated that additional sources of apprentices and journeymen, while "speculative", should not be "totally ignored" and that there is "no urgent need" to have other than a 1:1 ratio.

10. The City's position before the Administrator, as on this motion, is that a 3:2 ratio is the only acceptable ratio for meeting the first year goal of 10% non-whites as decreed by this Court. (Defs' Exh. C) The City based its proposal on the figures supplied to it by Mr. Bogen. Upon these figures, a 1:1 ratio would yield only 9.1% non-whites by July 1976. The City argued that failure to meet the 10% goal ordered by this Court on the most significant effort in opening up union membership to non-whites, i.e., the apprenticeship exam, could not be justified in view of the presently speculative probabilities of success of alternative routes to union membership and in view of this Court's statement in its October 23, 1975 Memorandum and Order (Pltff's Exh. A) that every diligent effort be utilized to achieve the Program's goals as early as possible. The City concluded that

> "[I]n view of the strong remedial program ordered by Judge Werker, which by its terms includes a non-white preference, each effort during the year to open union and apprenticeship membership should be treated as an independent effort to reach the 10% goal. ...
>
> Accepting this premise, the only acceptable ratio is three non-whites for every two whites. This ratio is also preferable since it guarantees to non-whites, the

class sought to be protected by the preference, the best opportunity for ultimately meeting the 10% goal. Any other ratio, e.g., 1:1, reduces this guarantee and, thus, fails to meet the district court's directives to meet the Program's goals as quickly as possible."

11. At the time that the determination of the ratio was before the Administrator, of which fact all the parties were fully aware pursuant to paragraph 30 of the Program, the defendants chose not to advance any position before the Administrator. (Defs' Exh. A; Defs' Memorandum, p. 4).

12. Following a conversation with William Rothberg, counsel for the three JAC Trustees representing the Contractors' Association, it is stated upon information and belief that 675 persons applied to take the December 13, 1975 apprentice-ship examination. Of this number, it is believed that there were 430 non-white and 245 white applicants. If this Court sustains the Administrator's choice of a 3:2 ratio, of the 300 apprentices to be indentured by July 1, 1976, 180 would be non-white and 120 would be white. Based on the number of non-white and white applicants, the 3:2 ratio would result in 42% of the white applicants being admitted, and 49% of the non-whites beng admitted. If this Court reduces the ratio to 1:1, 61% of the white applicants will be admitted in comparison to only 35% of the non-white applicants.

13. Pursuant to paragraph 21(a) of this Court's Order and Judgment, entered September 2, 1975, which establis the Program, Local 28 and the JAC have an affirmative duty to dispel their reputations for discrimination in non-white communities.

14. The notice of motion and memorandum submitted by Local 28 and the JAC Union Trustees ask this Court to set aside the 3:2 ratio. No other ratio is proposed and the implicit suggestion, from the language of the Memorandum, is that the motion is also being made in an attempt to get this Court to eliminate the setting of any ratio, at least prior to the determination of the exam results. It is submitted that such a result would completely alter the language and intent of this Court's Order and Judgment, entered September 2, 1975 and of the Program, dated November 13, 1975. It is further noted that no affidavit is submitted with the motion papers. Thus, there is no basis for the repeated assertion by counsel to Local 28 and the JAC Union Trustees that the ratio functions as a selection device "without regard to the ranking of any of the applicants on the apprenticeship examination or any other qualifications" (Defs' Memorandum, p. 3). Moreover, as is clear from its affidavit, the City disputes this statement of fact.

WHEREFORE, it is respectfully requested that the Administrator's determination of a 3:2 ratio for the December 13, 1975 apprenticeship examination be sustained and that the Court deny the defendants' motion.

Dated: New York, N.Y.
December 17, 1975

ELLEN KRAMER SAWYER

Sworn to before me this
17th day of December, 1975.

MARIAN R. PROBST
Notary Public, State of New York
No. 45233/3
Qualified in New York County
Commission Expires March 30, 1976

001419

ORDER, dated January 15, 1976, extending time to file applications for back pay, pursuant to Order and Judgment, dated August 29, 1976

(Copy will be submitted if necessary)

1420

(Short recess taken.)

THE ADMINISTRATOR: This is a decision and order of the Administrator based upon the application made by Local 28 to seek deferral of admission to the applicants who passed the journeyman's examination given October 11, 1975.

The application for deferral of admission is denied. After considering the arguments set forth by the parties, and having determined that the union would not be financially harmed by such admission, it is clear that the determination as to whether or not an applicant should be admitted at this time is a decision for the applicant to make.

There is no dispute regarding the high rate of unemployment in the industry, nor is there any serious question of the harmful psychological effects of the unemployment rate.

B11

However, it is clear that a person cannot truly enter the job market at all if he is not a member of Local 28. There are, therefore, counterveiling psychological, as well as economic factors. In such a case, the decision must be in favor of the applicants who could in fact be financially harmed by having the union determine or the

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Administrator determine when he could become a member of that job market.

It is my opinion that each applicent should be given the choice permitted pursuant to paragraph 19 of the affirmative action program and order, but that procedure should be developed by the parties to fully acquaint the applicants with the economic realities.

I would additionally like to note that a deferral of the nature requested would, in my opinion, undermine the program as a whole, especially where there has been no showing of substantive damage to the union as an institution.

The contention of the City regarding jurisdiction is without merit. It is the order of the Administrator that the applicants be advised of their right to become members of Local 28 by 5:00 p.m., December 1st, and that the applicants be advised of their rights pursuant to paragraphs 16 through 19 of the program.

Any appeal of this order may be had by any party based upon the record, decision and order of the Administrator entered this date. So ordered.

(Time noted: 11:15 a.m.)

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mdas

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- -x

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, and THE CITY OF NEW YORK,

Plaintiffs,

- against -

LOCAL 638 LOCAL 28 of THE SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL 28 JOINT APPRENTICESHIP COMMITTEE . . . SHEET METAL AND AIR-CONDITIONING CONTRACTORS' ASSOCIATION OF NEW YORK CITY, INC., etc.,

Defendants.

71 Civ. 2877 (HFW)

- -x

January 8, 1976 - 10:45 a.m.

Conference held at Room 525, United States Attorney's Office, One Saint Andrew's Plaza, New York, New York 10007, before Molly Danish, a Certified Shorthand Reporter and Notary Public of the State of New York.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
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Appearances:

PAUL J. CURRAN, Esq.
United States Attorney for the
Southern District of New York
One Saint Andrew's Plaza
New York, New York 10007
Attorney for Plaintiff United States
Equal Employment Opportunity Commission
BY: TAGGART D. ADAMS, Esq.
Assistant United States Attorney

DAVID RAFF, The Administrator

SOL BOGEN, Esq.
One Penn Plaza
New York, New York 10001
Attorney for Defendant Local 28

W. BERNARD RICHLAND, Esq.
New York City Corporation Counsel
Municipal Building
New York, New York 10007
Attorney for Plaintiff City of New York
BY: ELLEN KRAMER SAWYER, Esq. and
JAMES McNAMARA, Esq.

ROSENTHAL & GOLDHABER
44 Court Street
Brooklyn, New York 11201
Attorneys for Defendant Joint Apprenticeship
Committee & Trust
BY: WILLIAM ROTHBERG, Esq.

LOUIS J. LEFKOWITZ, Esq.
Attorney General of the State of New York
Two World Center
New York, New York 10047
Attorney for Third- and Fourth-Party Defendant
New York State Division of Human Rights
BY: DOMINIC TUMINARO, Esq.

Also present: HARRY J. RUECKERT, Financial
Secretary-Treasurer, Local 28

001423

THE ADMINISTRATOR: Application has been made by Local 28 regarding definition of pensioner. Mr. Bogen for the union will state the issue as he sees it.

MR. BOGEN: I communicated to you by phone several days ago that in attempting to comply with the reporting requirements of the Affirmative Action Program, I was reviewing the term "pensioner" as found in the AAP and as discussed and developed in the Judge's memorandum and order of October 23, 1975. I pointed out that I had also had a previous discussion with Mr. Adams with respect to the meaning of the word "pensioner" and those people were to be included in the union's computation for the purposes of reporting under the AAP. I did not think that that issue quote unquote was to be considered an adversarial one or whether there would be a conflict.

What I sought was clarification of that rather than get involved in some dispute. It was a little different than an adversarial type of thing. I think the parties were entitled to get a clarification. I cited to you the difficulty we were having in another area where clarification should have been sought in terms of the Judge's direction that in terms of the

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JAC examination, that an examination similar to the 1969 examination was to be given. It is our position that that meant a similar kind of different items, and the parties went off the track on the basis that other parties thought it meant the exact identical one. To avoid that kind of confusion, I thought it would be preliminarily proper to get a clarification. As far as I was concerned, that is what I sought.

I have no hesitancy or resistance to going ahead in terms of creating a record for the Court in the event the ultimate definition is inconsistent with our understanding. The term "pensioner" in the AAP appears in page 2, section 2. The issue presented for discussion, or what we sought for clarification, is what pensioners are to be included in calculating the membership of the union to be reported to the Administrator and the parties pursuant to the paragraph 38-B of the AAP upon which the interim goals and the ultimate goals is to be computed.

Paragraph 2 of the AAP states very clearly -- I am referring now to a different portion -- "For the purpose of measurement total membership shall include all journeymen menbers, all pensioners who have been employed as sheetmetal workers within the last three

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years," and the sentence continues on and that area shouldn't concern us.

The term "pensioner" is asterisked twice and a footnote explaining it says pensioners as used in the programming means any individual who receives benefits from the local 28 pension program.

In light of the Judge's language that appears at the bottom of page 1 and the top of page 2 of the memorandum and order of October 23, 1975, it is our understanding and I think it is crystal clear in interpreting what pensioners he is talking about, that he meant pensioners who as pensioners worked during the past three years, and not pensioners who prior to becoming pensioners worked during the past three years. That is supported clearly by the Judge's language.

I would like to read that. This appears at the bottom of page 1 of the opinion and memorandum I spoke about before: "To the extent that pensioners are defined in the program, that definition is adopted by the Court. Without discounting the political effect which the non-working pensioners' votes may have, it is the Court's rationale that the program's goals should be primarily addressed to the work force rather than the internal operations of the union. To do

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otherwise might create constitutional issues which have no place in this program of litigation. It is the Court's belief that ultimately the union membership including pensioners will recognize the rights of non-whites and the fact that those rights must be enforced regardless of the cost to the courts or the government involved in order to secure to all working people those rights which the Constitution has guaranteed."

Firstly, the Court in its second sentence I read, "Without discounting the political effect which the non-working pensioners' votes may have," was addressing itself to the argument that had been made primarily by the Administrator and adopted thereafter by the city, to the effect that pensioners have a vote.

As a consequence, all pensioners ought to be included. The distinction of using non-working pensioners obviously meant that he was dealing, the implication is clear that the group that was to be counted were working pensioners, not anybody else but working pensioners in that status.

The rest of that sentence clearly supports the contentions that were made by the union in this area to the Court and to the Administrator. It is the

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Court's rationale that the program's goals should be primarily addressed to the work force rather than to the operation of the union. The use of the work force concept indicates that what the Judge had in mind was pensioners who were working. We do have that group of people, people who are permitted to work up to a point in time without having lost their pension, have little consistent with the Social Security requirements, and thereafter pensioners who acquired the status of a pensioner could continue to work, give up their pension status and return to the work force.

It is clear in our opinion on the language that the Court used, accepting the distinction of non-working pensioners as opposed to working pensioners, stating it had to do with the work force and clearly saying he is not concerned with the internal operations of the union -- that is, pensioners who are working or not working, voting or not voting -- clearly support the position that the pensioner term used in the AAP as directed and approved by the Court was a pensioner who as a pensioner had worked during the prior three years.

THE ADMINISTRATOR: Let me ask you a question. Is it your position that if an individual was

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an active working member of Local 28 yesterday, and retired at the close of business yesterday, that if you conducted the count today, that that individual would not be included in that count?

MR. BOGEN: That's correct. The term "pensioner" and the language that I cited not only suggests that but would direct it. What we are talking about is a pensioner who worked as a pensioner during the prior three years. It could have been said that the Judge wanted to indicate it meant prior to. He would not have set up the counterdistinction of nonworking pensioners or dealt with the concept of a work force.

Your argument of including pensioners that was developed before you and which you kind of directed, had to do with the fact that, well, the pensioners do vote and they do influence policy, et cetera. The Judge said that is not to be included, that is the internal operations.

Hopefully everyone will get together and see the proper thing gets done. I am concerned with work force. That is the thing. To the extent the pensioner becomes a pensioner, taking your hypothetical rule further, a man becomes a pensioner yesterday at

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the end of the day, we then calculate today he would not be included. However, assuming that pensioner went back to work for one hour, one day, Monday, on the next calculation he would be included.

THE ADMINISTRATOR: For how long would he be included?

MR. BOGEN: He would be included with respect to that calculation. At that point in time as far as the three-year period. What is sauce for the goose is sauce for the gander. Once that pensioner works -- it's easy because we are just starting the beginning of a new year. An example would be we would look through our pensioner list and we would see any pensioner who worked any time at all in '73, '74 and '75, any time at all, that pensioner would be included in our calculation.

We wanted to get clarification. For that three-year period he is going to be included. Assuming that pensioner retired for example in '72. Went about six months a year, unemployment started to hit in '73, after summer become big, February and March he decided he didn't like retirement and went back to work a short period of time. We had provided 210 hours as a test at that time. But the Court did not opt for that.

Say he works a week. That pensioner, when he comes back on pensions rolls, then would be carried for a three-year period, because using the '73 date, '73, '74, he worked for that period of time.

THE ADMINISTRATOR: Suppose you had someone who had been retired for five years, hadn't worked a day. All of a sudden went back to work for a week. Does he then become calculated for the next three years?

MR. BOGEN: Absolutely, no question in my mind at all about that. The language is absolutely clear. Applying the rule as we understand it to your hypothetical, that pensioner would be a pensioner who worked during the past three years and he would continue to be a pensioner. That takes care of the problem, the possibility that the union -- possibly a motive the union would encourage the people to go off on pensions and they would come in and out. Once the man performed any work at all in three years he would be counted.

There was a fear this could be misused as some device, that just isn't there.

THE ADMINISTRATOR: Do you have any idea about how many people we are talking about?

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MR. BOGEN: Yes, I think when we proposed this and when we discussed this in the program there were approximately 237 pensioners who worked as non-pensioners during the prior three years. By definition every time it would be a lame duck situation. If a man retired in '76, before he was a pensioner he was a regular member, he would have worked, to all intents and purposes. It is almost by definition every pensioner would have to be included under that definition. I think our pension rules provide -- they haven't been amended yet but they will be -- that there is a two-year break in service, you would have lost past service credits **unless unemployment credits,** he gets an additional year.

Every pensioner retired up to this point, in all probability, I just want to leave an out if there is one or two, by definition would have worked as a regular journeyman member.

THE ADMINISTRATOR: If it was based on the proposition that you started counting that person as a pensioner even if they didn't work, they retired yesterday, for three years, how many people would fall into that category as opposed to how many people would fall in the category using the definition that you wish

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to use?

MR. BOGEN: I can only use the figures I gave before. The definition we would propose, there might be anywhere less than 50, certainly less than 50. I haven't looked at that aspect of it. The way the unemployment situation has been, this is a unique situation. There were times when the pensioners would work. They would come back at various times during the summer and work up to $1000. There is a long history of that. If you ask for the immediate prior three years because it included substantial periods of unemployment, starting with October '63 we were in a six-hour day. Under normal circumstances, a fairly high percentage of the pensioners do come back and forth.

THE ADMINISTRATOR: What I am trying to establish is you gave a figure of some 273 people.

MR. BOGEN: 237 would be counted as pensioners who prior to becoming pensioners, prior to, and as journeymen, had worked sometime during the three years. That is the definition that should not be accepted. If our definition is accepted, I don't have the figure, it would certainly be less than 50. Maybe less than 25 for all I know because of the three years immediately preceding '76.

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THE ADMINISTRATOR: Do you have any further comments you wish to make at this time?

MR. BOGEN: No. I wish to reserve a few minutes if necessary, excluding your questioning.

THE ADMINISTRATOR: Mr. Adams.

MR. ADAMS: The position of the EEOC is that the definition of pensioners included in the Affirmative Action Program includes those pensioners who were employed as sheetmetal workers, which is what the program says, whether or not they were pensioners. If a journeyman member went into pensioner status on January 1, 1976, and had been employed as a sheetmetal worker on December 31, he would be included as a pensioner under paragraph 2, and the other paragraphs of the Affirmative Action Program that refer to paragraph 2, until December 31, 1978. That definition and that understanding of the definition on the part of the EEOC is based on a fairly substantial history with regard to this definition beginning as early as August 27, when this office wrote to Judge Werker suggesting that because of various objections to including all pensioners in the Affirmative Action Program or the order in judgment, that that matter was under discussion at that time, that this matter of pensioners be put over

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until an Affirmative Action Program was set out.

That suggestion is contained in our letter of August 27 and was embodied in the order and judgment, paragraph 11, which was signed on August 28.

After considerable negotiations on the Affirmative Action Program, the program as submitted to Judge Werker included the definition as is set forth in the program that was assigned by Judge Werker. This was my understanding during the negotiations, that the definition we were including in the Affirmative Action Program would mean that about 237 pensioners would be included in the definition and included on the basis for goals and numbers and so on. This understanding I think is substantiated by Local 28's objections dated October 10. On page 5 and 6 of those objections submitted by Mr. Bogen, Mr. Bogen gives the number of pensioners included in the definition of employed in the last three years as 237. The city's objections to the Affirmative Action Program took the position that all pensioners ought to be included for the reasons stated in their letter and somewhat summarized by Mr. Bogen.

The EEOC took the position that we ought to strike some sort of compromise in this situation and

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said very clearly in our letter of October 15 that there were competing interests here, but we felt the definition as proposed, that all pensioners employed as sheetmetal workers in the last three years, was a fair compromise because it would raise the amount of pensioners counted by 70 percent. That was based on Mr. Bogen's objections dated October 10 where he counted 237.

The Court in its memorandum said it would accept the definition provided in the Affirmative Action Program. I would point out that the Affirmative Action Program does not say all pensioners who have been employed while pensioners. It says all pensioners who have been employed as sheetmetal workers. And sheetmetal workers includes anybody who worked as a sheetmetal worker whether on pension status or journeyman status.

We believe a clear reading of the language of the Affirmative Action Program which Judge Werker stated he was accepting is dispositive. Furthermore, I think the history after Affirmative Action Program was established would substantiate that. Certainly all of the discussions and all of the contentions made with regard to the ratio to be chosen, certainly by the city and the EEOC, which are the only ones on record

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as to how the numbers would come out, included 237 pensioners. That was the basis upon which the Judge made his decision on the ratio.

I think that while it is somewhat of a bootstrap argument, the so-called legislative history of this thing is very clear as to precisely what "pensioners" means. It means all those people who have been employed as sheetmetal workers **either as** pensioners or journeymen in the last three years.

THE ADMINISTRATOR: Do you believe that the language cited by Mr. Bogen beginning in the second sentence of the paragraph of the memorandum and order in any way modifies that view?

MR. ADAMS: No, I think it is response to a position that was articulated not only in the discussions of the Affirmative Action Program which lasted over a month, but articulated in writing by the city's responses which discussed very correctly the problem of all pensioners, far more than the 237 we are talking about, being able to vote, being able to make decisions which would affect the collective bargaining agreement, employment rights and so on.

I think Judge Werker's decision to accept the three-year limitation was then rationalized, if I might say

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that, with his further discussion as to why he was not accepting all pensioners. And that was the reason. That is what those sentences in the memorandum are directed to.

THE ADMINISTRATOR: Mrs. Sawyer?

MS. SAWYER: The city agrees one hundred percent with the EEOC. I want to emphasize the wording of the memo and the wording of the program, indeed, Mr. Bogen's own arguments are to show the only issues here are in connection with the work force. That is absolutely irrelevant. This is not civil service, which title the guy held at the time he was working. In fact, it would be violating the program to exclude men who were working as sheetmetal workers up until yesterday, if at the moment of truth suddenly become pensioners.

THE ADMINISTRATOR: Mr. Tuminaro, have you reconsidered whether you want to say something?

MR. TUMINARO: Simply that I support the position that Mr. Adams has outlined. I think that is the correct interpretation of what is in the Affirmative Action Program.

THE ADMINISTRATOR: Mr. Bogen, do you wish an opportunity to reply?

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Mr. Rothberg, do you wish to make a comment?

MR. ROTHBERG: No.

MR. BOGEN: I have two things. One, I did not mean to suggest and I don't want to interject an extraneous suggestion to which Mr. Adams addressed his remarks. It is my position today that the EEOC and the city intended the result that I proposed was the correct result. Mr. Adams is absolutely correct with respect to his position as to what he intended. If the issue were what Mr. Adams intended or Mrs. Sawyer, he wouldn't be here because he is absolutely clear.

I made it clear I indicated 237. But that is not what we are here about. We are not here about Mr. Adams' state of mind or Mrs. Sawyer's or yours. We are dealing with interpretation of the Judge's language and his comments. That is what we are concerned about.

I say to you the language I cited clearly would indicate the Judge had the work force in mind and not some kind of concept of the pensioners. If you recall in terms of the discussion, Mr. Adams had offered this kind of proposal and with his intention in mind, on the basis that this approach would avoid permitting the union to use this as a gimmick to reduce

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artificially or improperly in violation of the program the total numbers. This would be a gimmick.

I suggested then and I suggest now, one, the language doesn't permit that. If there was any kind of proof along those lines, it could be handled on that basis. The second thing I wanted to reserve. I attempted to review, to the extent they are available as a matter of public record, those Affirmative Action Programs involved in our community now and elsewhere. Nowhere have I ever been able to find in the same district, in the same circuit, a program that includes for purposes of calculating goal or quota or what have you, pensioners under any circumstances. I think what happened in the Judge's language, a lot of them strictly prohibit a pensioner from doing any work whatsoever.

In my experience and judgment, most programs, including construction as well as not, have an absolute prohibition of work, because it is a violation of the position taken at retirement. They can not only not work in the immediate industry, but related industry. That has been a source. This is the background you normally have.

28's position was unique. They permitted pensioners to work as pensioners up to a point. I think

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the Judge had that in mind. There was a record of pensioners having done some work. That was revealed in the court itself when the question came up during severe shortages of manpower. There was a time when pensioners were requested to come back to work, in the late sixties. I believe that is a matter of record. Again we say the language indicated by the Court's memorandum of opinion, the fact that no other program that we have been able to determine -- I would rely on the Administrator's judgment and experience because I know you have had contact with that and the Court is knowledgeable about that -- whenever any program where pensioners as pensioners were included based on prior work experience.

THE ADMINISTRATOR: Mr. Adams, Mrs. Sawyer.

MR. ADAMS: No further comments.

MS. SAWYER: No.

MR. BOGEN: Do you intend to make a ruling?

THE ADMINISTRATOR: I intend to make a ruling now.

MR. BOGEN: What I have in mind as an alternative to your ruling is to have the record as now compiled submitted to the Court and have the Court review the matter. And I would stand on the record. Rather than get involved in a situation where we are attempting

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to interpret the language of the Court and the Court would be available to state clearly what may take place.

I may save time and effort.

THE ADMINISTRATOR: It is my conclusion by reading paragraph 45 of the Affirmative Action Program, that it is my responsibility and obligation to make decisions on any questions of interpretation on this program. As a consequence, I do not feel it would be proper to send this matter strictly up to the Judge on the record without a comment.

MR. BOGEN: I have no objection.

THE ADMINISTRATOR: I have discussed this matter with Mr. Bogen on the telephone prior to today's proceeding. Mr. Bogen did ask my interpretation of this matter and I gave to him my view that the position that was espoused by the EEOC today was the correct position, that the pensioners to be counted were to be those pensioners who had worked as sheetmetal workers within the last three years. I indicated to Mr. Bogen that I would not go to the Judge and seek clarification of the language and that it was my responsibility as the Administrator to interpret language and that is the way I was going to interpret it.

Mr. Bogen disagreed with that and requested

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there be some kind of ruling or decision or seeking a clarification from the Judge. In my view the appropriate way to proceed on this was to go on the record, to hear argument on it. I have heard Mr. Bogen's comments and argument. My position and interpretation has not changed or been altered by those comments. It is clear to me that the intent of what the parties had discussed and which was espoused at this table was fully implemented by the Affirmative Action Program and order which was signed after memorandum and order and which was substantially modified as a consequence of the memorandum and order. And the language alluded to dealing with **pensioners** with three years experience was not significantly changed, was not changed at all, in the final Affirmative Action Program which came down. It is my view that the language of the Judge's memorandum and order which says "To the extent that pensioners are defined in program, that definition is adopted by the Court" is in fact dispositive.

Consequently, it is my decision that any pensioner who has been employed as a sheetmetal worker within the last three years is to be counted for the purposes of the overall measurement of total membership.

Any party wishing to appeal this decision to

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the Judge has ten days in which to so appeal.

MR. BOGEN: Have you concluded your remarks?

THE ADMINISTRATOR: Yes.

MR. BOGEN: I would ask we be given a greater time than ten days, not much greater, but possibly about twenty. We intend at this point to seek a further clarification from the Court itself and by definition a review of your decision now. The difficulty with that is that I am involved with a situation relating to this case in terms of dealing with the perfection of an appeal from the Affirmative Action Program itself.

THE ADMINISTRATOR: What date is that?

MR. BOGEN: Probably the stay will be sought tomorrow, Monday or Tuesday, depending upon what judges are available.

THE ADMINISTRATOR: What date is your appeal on the Affirmative Action Program?

MR. BOGEN: The notice of appeal has been served and filed. We are in the process of attempting to develop a stipulation with the parties as to deferring the perfection of the record and the filing of the Form C with the circuit. If we could work that out, that would be something. If not, we would have ten days. I think the 6th or 7th was the time we had to serve and

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file notice of appeal. We have ten days from that day to go ahead.

I am engaged on some work on this case alone. Since the only thing that is involved at this point would be a report by the union to the Administrator and the parties as to the computation, there is no action to be taken. No party can be hurt in some kind of delay.

THE ADMINISTRATOR: Any objection by any counsel to extend the time to twenty days?

MR. ADAMS: No.

MS. SAWYER: No.

THE ADMINISTRATOR: Mr. Bogen on behalf of the union has been granted twenty days to get a review of my decision.

(Discussion off the record)

THE ADMINISTRATOR: The record should reflect that the period of time Mr. Bogen has to file by is by 5:00 p.m., January 30.

MR. BOGEN: I assume also that in effect would defer the filing of the report until that date too or until a determination by the Court. I suspect the papers will be filed by that date and there will probably be a decision of the bench. I want to make it

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clear that the report that the union is required to file would be deferred until after that determination also.

THE ADMINISTRATOR: I am not going to grant that request. What I will ask be done is that there be a footnote demarcation as to those individuals who would then be pulled out if the Court should overrule my decision on this matter. You are to supply the records that are supposed to be supplied with a separate indication of those who are pensioners who fall in the disputed area.

MR. BOGEN: We will do that. Can we have some date on that? Uo to this point we have not filed records. They are in the process of being compiled.

THE ADMINISTRATOR: The Affirmative Action Program speaks of January 1, is when it was supposed to have been filed.

MR. BOGEN: On the other hand, the material with respect to that was presented to the Administrator and the parties firstly informally, indicating the composition back in October or November, and then in the papers that we had submitted in connection with our objection. It is a question of re-presenting those figures and updating them.

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THE ADMINISTRATOR: I will defer to January 15 the submission of the recomputation of those figures to the parties.

MR. BOGEN: In light of your indication that you wanted these items footnoted out, we will submit the records to you as soon as possible. We will not wait until the 15th. If it can be done in the next day or two, we will do it.

(Time noted: 11:30 a.m.)

mdas

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- -x

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, and THE CITY OF NEW YORK,

Plaintiffs,

- against -

: 71 Civ. 2877 (HFW)

LOCAL 638 LOCAL 28 of THE SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL 28 JOINT APPRENTICESHIP COMMITTEE . . . SHEET METAL AND AIR-CONDITIONING CONTRACTORS' ASSOCIATION OF NEW YORK CITY, INC., etc.,

Defendants.

- -x

January 8, 1976 - 11:35 a.m.

Conference held at Room 525, United States Attorney's Office, One Saint Andrew's Plaza, New York, New York 10007, before Molly Danish, a Certified Shorthand Reporter and Notary Public of the State of New York.

001448

Appearances:

PAUL J. CURRAN, Esq.
United States Attorney for the
Southern District of New York
One Saint Andrew's Plaza
New York, New York 10007
Attorney for Plaintiff United States
Equal Employment Opportunity Commission
BY: TAGGART D. ADAMS, Esq.

DAVID RAFF, The Administrator

SOL BOGEN, Esq.
One Penn Plaza
New York, New York 10001
Attorney for Defendant Local 28

W. BERNARD RICHLAND
New York City Corporation Counsel
Municipal Building
New York, New York 10007
Attorney for Plaintiff City of New York
BY: ELLEN KRAMER SAWYER, Esq.
JAMES McNAMARA, Esq.

ROSENTHAL & GOLDHABER
44 Court Street
Brooklyn, New York 11201
Attorney for Defendant Joint Apprenticeship
Committee & Trust
BY: WILLIAM ROTHBERG, Esq.

LOUIS J. LEFKOWITZ
Attorney General of the State of New York
Two World Trade Center
New York, New York 10047
Attorney for Third- and Fourth-Party Defendant
New York State Division of Human Rights
BY: DOMINIC TUMINARO, Esq.

Also present: HARRY J. RUECKERT, Financial
Secretary-Treasurer, Local 28

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THE ADMINISTRATOR: Local 28 through its attorney, Mr. Bogen, has made application to the Administrator with regard to the four-year experience admission program which was scheduled to commence on January 1. By letter from said Administrator a stay was granted to the union until 5:00 p.m., January 9, for implementation of that program, such stay to be modified, lifted or amended pursuant to decision today. Mr. Bogen will state the issue as he sees it for the union.

MR. BOGEN: In accordance with the provisions of the affirmative action program, paragraph 15, a program for admission to Local 28 journeyman membership of non-whites with four years experience, et cetera, et cetera, was to commence January 1, 1976. By letter dated December 23, 1975 on behalf of Local 28 a deferral of that program was sought for the reasons set forth in that letter. I ask that that letter be sub-joined to the record rather than my reading it in as part of it.

THE ADMINISTRATOR: Do you have another copy of that letter?

MR. BOGEN: Yes. I offer it at any time if anyone doesn't have the letter in front of him.

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THE ADMINISTRATOR: Mark it as Exhibit A.

*** (Letter dated December 23, 1975 received as Exhibit A in evidence.)

MR. BOGEN: It sets forth the philosophy of the union in this situation which is as follows: We did take some kind of sampling with respect to who was out there and who might be available to come in. We did that by way of the publicity and the solicitations for the October 11, '75 journeyman exam. The amount of applicants we received, the people who indicated experience, was on the minor side, total numbers of applicants was 161. Of that 161 I understand RTP worked up a profile and we had worked up a profile, but there were a handful at most with people of this kind of numbers of experience. Some of those passed the exam. I don't have the details but those details are already before the Administrator. We ran into difficulty, somewhat, with the applicants for the test, because of the appropriateness of the sheet mill experience.

This is an effort, as we understand it, to permit to come into the union people who are qualified journey sheetmetal, not by a test but simply on that basis. In our opinion, based upon whatever empirical proof we have, there just isn't that kind of individual

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around right now to undertake a program at this time in light of this severe unemployment and the expense and effort entailed to go out and solicit people of this type.

THE ADMINISTRATOR: Let me ask you for a clarification. What you mean by program. Are you asking for a deferral of an affirmative program which goes out to recruit through advertising and other means or are you asking for that and in addition to that, that if there is someone out there with four years' experience that you would not entertain application from them until April 1?

MR. BOGEN: We are asking for both. We think it would be a monumental waste of time and effort and a cruel hoax for people to go out and say come on in, assuming we can identify those people, and then have no jobs available for them. We are in the course of one formal meeting and one separate individual, informal meeting. People who successfully passed our journeyman examination questioned officers of the union as to why a test was given when in fact there were no jobs. Regardless of what the program provides and what the parties think about for whatever reasons, and I accept them all as of the highest motive, in the

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members' view they equate the membership with jobs. Now we have probably 1100 people. There is nothing out there for them. To say to someone "Come on in," they think we are playing games with them. It is set forth in the letter clearly. Our records would indicate, and the records you have, that there aren't these kind of people. The cost of administering and handling and setting up to the union is becoming burdensome. The union can't pay its bills now, including the Administrator's fees.

I think the letter sets forth fairly clearly the reasons that we believe this would be the wrong time, the wrong place, the wrong motivation for people to come in under this setup. To put the thing over for a short period of time to get the thing into focus.

Who is out there now? If in fact there are great numbers or some numbers, that would be one thing . If we had situations where we could identify people of this sort, if we had jobs available, if the union were in a position to have an open-ended policy with respect to funds, but in face of all these factors we ask for a short deferral.

Let's take a look at what happens April 1,

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'76. Then we go ahead with the program. We ask that that matter be deferred.

THE ADMINISTRATOR: What is the union's objection, if an individual were to come forward and indicate to the union that they had four years' experience -- let's assume we had a definition, which we do not, let the record show -- what would be the union's objection to having that person reviewed by the tripartite board and if found qualified to be admitted, without any effort on the part of the union to recruit, he simply came forward and made application. What is the union's objection to admitting him?

MR. BOGEN: We feel the concept when you are detached up in this office, talking about admission, it is not the real world. It is worse than an ivory tower situation. We are holding out the concept to these people that we have jobs. You are misleading them. It is tantamount to saying to these people, why would someone come forward now? By definition he would probably be working someplace else. If he were in sheetmetal he would not have to give that up if he were accepted and found qualified. The union now has been disrupted in terms of evaluating. There is only a certain amount of time and personnel. We are attempting

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to comply with the AAP.

In response to my letter, you request that you have before you a definition and a form. Let the record show such a definition was furnished to you with the form. Again, you are beating a dead horse. the union's position is, there is no purpose going to be served at this particular time. You have an artificial date to begin with. There is **nothing** magical about January 1. We **say** the realities of the situation dictate a deferral. If this were any other situation, nobody rationally would say spend the money, spend the effort, give them the opportunity to reject it, even if there were one. We think it's the wrong period and the wrong time to do.

We just think it's wrong. The easiest thing would be to **define** anybody is going to come in. The people who successfully completed were deferred. We will have a full report for the Administrator. We are engaged in acts of futility just for the gesture itself. The union doesn't want to subscribe to empty gestures. We think it's a wrong thing to do now.

THE ADMINISTRATION: Has the union selected an individual to be on the tripartite board of experts?

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MR. BOGEN: No, we are considering that selection as we are directed to do so. We would participate but we haven't selected one. Our selection would be probably Mr. Schluter. But we are not wedded to that. We are not sure with these circumstances.

THE ADMINISTRATOR: Mrs. Sawyer?

MRS. SAWYER: Mr. Bogen, I take sharp issue with much that you said. First of all, it's almost like being in the same movie over and over. You raise this economic argument that has been rejected by the Administrator and by the Court on all your applications. To carry your economic argument a little further than you take it, there is no reason completely to show the program until things get better.

MR. BOGEN: May we go off the record for a moment?

THE ADMINISTRATOR: Off the record.

(Discussion off the record.)

MRS. SAWYER: What remains as clear as day is, when and if the market and the economy gets better, it's a better thing to be inside the union than outside when you are waiting for a job. It's still a chase for the individual guy whether he would have a union in a private taxicab or wait outside the union before he

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starts competing for the goods. Also, you talk about the good faith of the union in complying with the program. So far your compliance has been restricted, insofar as it exists at all, to handing over documentation, records, which is no more than documenting the status quo. The program calls for several things to be acted on. Each time something comes up, you make a motion for it to be deferred. I want to go into the reasons given for the deferral stated in your reason.

The first reason is, we know from the October 11 exam results there are very few equipped guys for this access route. We don't know any such thing. These routes were set up as separate and distinct routes under the program. They do not co-exist. The results of one do not reflect on the other.

You talk about a tremendous cost to the union. We are not interested in imposing a cost. The city would have no objection at this point to conceding, if you would like to raise the initiation of an extensive publicity campaign. This program can be run for a while strictly word of mouth. As the Administrator has suggested, on the grounds that if someone comes forth and wants to make application, the procedures will have been set up for him to do so, procedures which

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the program says should be set up by January 1. I see no cost to the union. Then again, in line with the severity of the current unemployment, it's irrelevant. This is the paternalistic argument that the Administrator and the Court have refused to buy up till now.

Also, if that is so, I don't see why you put April 1 as the end date to your application. There is no reason to think that the economy is going to change by April 1. What are we going to do April 1? Come in and have another application for deferral? It begins to be absurd. Another thing you put into your letter is that the mechanics in setting up the procedure are very cumbersome and difficult. I don't see why. All the parties are asked to do under the program is to come forth, each party, with his candidate for this tripartite board of experts. I think that your argument about the definition is a complete lightweight. First of all, the parties have no jurisdiction under the order to determine the definition of four years' experience. The order states exactly what should appear in the application form. It is very clear. Four years' experience is defined by on-the-job, vocational training, or whatever. Then it's up to

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the tripartite board of experts in going over each application to determine what the requisite experience is, the sufficiency of each application. You make it seem much more cumbersome than it is.

I suggest to the Administrator that it is very easy to get up this program. All we have to do now is set up the board, allow them to have the appropriate input under the program, into determining the necessary sheetmetal experience, and there is no cost involved in the union except what may be demanded by the union's representative on the board. I don't want to go into that now.

THE ADMINISTRATOR: Mr. Adams?

MR. ADAMS: I agree with the position taken by the city. I have some additional comments. At the outset I wonder if we are not making a mountain out of a molehill. We do not have at this point a tripartite board. That is not because the Administrator hasn't done everything in his power to suggest to everybody that their nominations be made. The EEOC **is lax, as** everybody else, on that.

I wonder if I couldn't make a proposal that we establish that the tripartite board be established by February 15, that applications then be made by that.

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I know of no applications that have been made to this point. I suggest that it might very well take 25, 30 or 35 days.

Let me go back a step. I see no point in having a tripartite board meet fifteen days earlier, for instance, to consider one application. If we say that they should start to meet and be established by February 15, they might be able to take up ten or twenty applications, a far more efficient use of their time. I consider the discussions they are going to have to have among themselves, because I agree with the city of New York that that definition should probably come up with them. To inspect the applications, to talk to the applicants, to investigate the proof of the requisite experience, may very well take a certain amount of time, particularly if we are dealing with what we hope to be more than one or two applicants.

There might not be that much time between that proposal and what the union is proposing. I do think that those people who are ready and willing now to make applications should be permitted to move ahead fast. There is no question to the extent that there is sheetmetal work in the city, it has historically been greater during the spring and early summer than during

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

the winter. I see no reason to delay the applicants who meet the requisite experience requirement. I think their chances of getting work opportunities are greater in late March or April, May and June, and they should not miss that opportunity. I am wondering whether or not the days we are talking about are so small in number, considering what still has to be done, as to whether the proposal I put forward that the tripartite board be established and be ready for operation by February 15, and that all those people who between now and then have made application to it would then be considered starting on February 15. This is a continuing program. This tripartite board exists to 1981, according to the affirmative action program. We are not having something that will fold and go away. It will be ready to operate by February 15 and at that point they would be more efficiently, they might have more applications to deal with rather than meeting every night on each new applicant.

Given that schedule I wonder whether we are not really talking about a week or two difference in dates. If so, maybe that would be a procedure that ought to be considered by Local 28.

THE ADMINISTRATOR: What is your view on

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FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

mdas

the advertising?

MR. ADAMS: Given the fact that we have had some advertising already, this office has a number of documents and records on people we have done on previous advertising, to put off the advertising program for a reasonable period of time.

THE ADMINISTRATOR: Without cutting off Mr. Tuminaro, Mr. Bogen, do you see anything here where we might be able to go off the record and reach a compromise, or do you wish to proceed?

MR. BOGEN: Yes, I think there may be. I think Mr. Adams' suggestion is a good one and I would like to go off the record at this time.

THE ADMINISTRATOR: Do you have a statement for the record, Mrs. Sawyer?

MRS. SAWYER: Yes. The city goes along with Mr. Adams' proposal. I think it's a very good one. However, the city would want that the members of the board be designated and appointed this month, and that during this month we devise the application for the program, although the functioning of the board won't start before February 15.

THE ADMINISTRATOR: Mr. Tuminaro, before we go off the record, is there any comment you would

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

like to make on the record?

MR. TUMINARO: I also think it's reasonable to defer an extensive publicity campaign at this point for a reasonable period of time. I also suggest that once the tripartite board is established, I don't think it's reasonable to defer individual applications being made to that board. I think even though much of Mr. Bogen's remarks are certainly an accurate characterization of the economic situation, individual people should still have the choice of entering the union in terms of admission, and that we ought not foreclose that possibility to such individuals.

THE ADMINISTRATOR: Do you have any comments, Mr. Rothberg?

MR. ROTHBERG: No.

THE ADMINISTRATOR: We are going off the record to see if we can reach some type of agreement regarding this issue.

(Discussion off the record)

THE ADMINISTRATOR: During discussions off the record, based upon a procedure put forward by Mr. Adams representing the EEOC, the parties have agreed that the tripartite board of experts as mandated and required by the affirmative action program shall be

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

established and appointments made no later than 10:00 a.m. February 15. All parties have further agreed to work in good faith to prepare the necessary machinery so that the tripartite board may go into operation on the 15th, such machinery to include such items as the application form and possible discussion of the parameters of four years' experience.

Do any parties with to make any comments as to that agreement?

The record is closed. That completes the items for the record.

(Time noted 12:20 p.m.)

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

EXHIBIT INDEX

Exhibit		Page
A	Letter dated December 23, 1975 received in evidence.	4

SOL BOGEN

Exhibit to Transcript Jan 8

December 23, 1975

David A. Raff, Esq.
49-51 Chambers Street - Room 220
New York, N. Y. 10007

Re: EEOC and City of New York
vs.
Local 638 . . . Local 28, etc., et al
71 Civ. 2877 (HFW)

Dear Mr. Raff:

This is an application on behalf of Local 28 to defer the establishment of "a program for admission to Local 28 journeyman membership of non-whites who have had four years (of sheet metal) experience," as provided in Section 15 of the Affirmative Action Program, from January 1, 1976 to April 1, 1976.

This extension of time is requested upon the following grounds:

1. The records developed from the Journeyman's Examination of October 11, 1975, strongly indicate that there are few, if any, non-whites who might be qualified with sufficient appropriate sheet metal experience to justify a program of such admissions at this time.

2. The cost of the development and administration of any such program, in light of the limited potential, would constitute an undue and unnecessary burden on the Union's present financial crisis - records of Local 28's precarious fiscal position were previously furnished to you and counsel for all parties.

3. The severity of current unemployment (approximately 1600 journeymen; 120 apprentices) would create a counterproductive atmosphere for such proposed admissions, now, of minority groups. There being no jobs available, the non-whites (as well as the whites to whom these procedures would be extended) could reasonably (i) consider the program an empty gesture without jobs; (ii) not seek admission; and (iii) look upon the entire program as a tactic or stratagem offered at a time when its results would be misleading and meaningless to them.

4. The mechanics of this admission procedure, particularly the definition or content of appropriate "sheet metal experience" -

which proved troublesome and confusing as an eligibility requirement for the Journeyman Examination - should be thoroughly and carefully prepared and reviewed by counsel for the parties and the Administrator. This approach would require more time than now allotted under the Affirmative Action Program.

For all of these reasons, it is respectfully urged that a program of "experience admissions" be deferred to April 1, 1976.

Very truly yours,

SOL BOGEN

SB/fl
opeiu/153

cc. Taggart D. Adams, Esq.

Ellen Kramer Sawyer, Esq.

Dominick Tuminaro, Esq.

William Rothberg, Esq.

January 15, 1976

BY HAND

Flack
USDC
3/5/76

David A. Raff, Esq.
49-51 Chambers Street - Room 220
New York, N. Y. 10007

Re: EEOC and City of New York
vs.
Local 638 . . . Local 28, etc., et al
71 Civ. 2877 (HFW)

Dear Mr. Raff:

In accordance with the provisions of Paragraph 38 of the Affirmative Action Program, reported hereinbelow is the census of Local 28's membership as of January 1, 1976:

	White	Non-White	Total	% of Non-Whites
Journeymen	2774	119	2893	4%
Pensioners*	271	1	272	-
Apprentices	140**	47	187	25%
Grand Totals	3185	167	3352	5%

*Persons who worked as journeymen, prior to retirement as pensioners, within last three years, subject matter of appeal to Court from determination of Administrator on January 8, 1976.

**Includes seven (7) Orientals.

Very truly yours,

Harry J. Rueckert

HARRY J. RUECKERT
Financial Secretary-Treasurer

HJR/fl
opeiu/153

cc. Taggart D. Adams, Esq.
Ellen Kramer Sawyer, Esq.
Dominick Tuminaro, Esq.
William Rothberg, Esq.
Sol Bogen, Esq.

001468

SUBJECT
INDEXED
SERIALIZED
FILED

UNION
28 OF
K CITY
Broadway
at 58th St.
BUS CIRCLE
20th Floor
, N.Y. 10019
Union Office
12) 541-6200
nd's Office
12) 541-6300

FFILIATED
e AFL & CIO
ate Building
Construction
s Council
Building and
ction Trades
Greater N.Y.
Central
AFL & CIO

M. L. GOLDMAN & SON, INC., LEGAL STATIONERS, 90 WEST BROADWAY, N. Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, and THE CITY OF NEW YORK, Plaintiff, -against- LOCAL 638 . . . LOCAL 28 OF THE SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL 28 JOINT APPRENTICESHIP COMMITTEE, . . . SHEET METAL AND AIR-CONDITIONING CONTRACTORS' ASSOCIATION OF NEW YORK CITY, INC., etc., Defendants.	71 Civ. 2877 (HFW) NOTICE OF MOTION
LOCAL 28, Third-Party Plaintiff, -against- NEW YORK STATE DIVISION OF HUMAN RIGHTS, Third-Party Defendant.	Oral Argument Requested
LOCAL UNION 28 JOINT APPRENTICESHIP COMMITTEE, Fourth-Party Plaintiff, -against- NEW YORK STATE DIVISION OF HUMAN RIGHTS, Fourth-Party Defendant.	

S I R S :

PLEASE TAKE NOTICE, that upon the Affirmative Action

Program and Order, dated November 13, 1975, and the Memorandum and Order of the Court, dated October 23, 1975, the Defendant Sheet Metal Workers International Association, Local Union No. 28 ("Local 28") will move this Court before the Honorable Henry F. Werker, United States District Judge, in Chambers 2904 of the United States Court House, Foley Square, Borough of Manhattan, City and State of New York, on the 22nd day of March, 1976 at 10:00 o'clock in the forenoon of that day, or as soon as counsel can be heard, for an Order (i) setting aside the decision of the Administrator herein that the term "pensioners" as used in the Affirmative Action Program for the purposes of computing the membership of Local 28 includes pensioners who, prior to becoming pensioners, were employed as sheet metal workers within the last three years and (ii) directing that only those pensioners who, subsequent to becoming pensioners, were employed as sheet metal workers within the last three years, on the grounds that said decision is unreasonable, unwarranted and contrary to the provisions of the Memorandum and Order of the Court.

PLEASE TAKE FURTHER NOTICE, that answering papers,

if any, are required to be served and filed on or before March 12, 1976.

Dated: New York, New York
February 26, 1976

Yours, etc.,

SOL BOGEN
Attorney for Defendant
Local No. 28
One Penn Plaza
New York, New York 10001
(212) 736-7570

TO: HONORABLE THOMAS J. CAHILL
United States Attorney
1 Saint Andrew's Plaza
New York, N.Y. 10007

Att: Taggart D. Adams, Esq.
Assistant United States Attorney

HONORABLE W. BERNARD RICHLAND
Corporation Counsel
Municipal Building
New York, N.Y. 10007

Att: Ellen Kramer Sawyer, Esq.
Assistant Corporation Counsel

HONORABLE LOUIS J. LEFKOWITZ
Attorney General
Two World Trade Center
New York, N.Y. 10047

Att: Dominick Tuminaro, Esq.
Assistant Attorney General

ROSENTHAL & GOLDHABER
44 Court Street
Brooklyn, N.Y. 11201

Att: William Rothberg, Esq.

DAVID RAFF, ESQ.
49-51 Chambers Street
New York, N.Y. 10007

001471

M. L. GOLDMAN & SON, INC., LEGAL STATIONERS, 50 WEST BROADWAY

MEMO ENDORSED

N. Gorsi
0-1674
mjb

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, :
and THE CITY OF NEW YORK, :

Plaintiff, : 71 Civ. 2877 (HFW)

-against-

LOCAL 638 . . . LOCAL 28 OF THE SHEET :
METAL WORKERS' INTERNATIONAL ASSOCIATION, :
LOCAL 28 JOINT APPRENTICESHIP COMMITTEE, :
. . . SHEET METAL AND AIR-CONDITIONING :
CONTRACTORS' ASSOCIATION OF NEW YORK :
CITY, INC., etc., :

Defendants. NOTICE OF MOTION

- x

LOCAL 28, :

Third-Party Plaintiff, : Oral Argument Requested

-against- :

NEW YORK STATE DIVISION OF HUMAN RIGHTS, :

Third-Party Defendant. :

- x

LOCAL UNION 28 JOINT APPRENTICESHIP :
COMMITTEE, :

Fourth-Party Plaintiff, :

-against- :

NEW YORK STATE DIVISION OF HUMAN RIGHTS, :

Fourth-Party Defendant. :

- x

S I R S :

PLEASE TAKE NOTICE, that upon the Affirmative Action

U.S. FILED CO
MAY 17 1976

RECEIVED IN CHAMBERS
OF JUDGE HENRY F. WERKER
FEB 27 1976

ATTORNEY'S CERTIFICATION

STATE OF NEW YORK, COUNTY OF

The undersigned, an attorney admitted to practice in the State of New York, does hereby certify, pursuant to Section 2105 CPLR, that I have compared the within

with the original and have found it to be a true and complete copy thereof.

Dated: *19*

.....

Type or Print Name Below Signature

NOTICE OF ENTRY OR SETTLEMENT

[Check and complete appropriate box and section]

Sir(s):

PLEASE TAKE NOTICE that a

of which the within is a (true) (certified) copy

☐ *NOTICE OF ENTRY*

was duly entered in the within named court on *19*

☐ *NOTICE OF SETTLEMENT*

will be presented for settlement to the Hon.

one of the judges of the within named court at the courthouse at

on *19*

at *o'clock* *M.*

Dated: *19*

Yours, etc.,

SOL BOGEN

Attorney(s) for

Office and Post Office Address

ONE PENN PLAZA
NEW YORK, N. Y. 10001

To

Attorney(s) for

Index No. 71 Civ. 2877 *Year 19*
(HFW)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, and THE CITY OF NEW YORK,

Plaintiffs,

-against-

LOCAL 638 . . . LOCAL 28 OF THE SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, et al.,

Defendants.

NOTICE OF MOTION

SOL BOGEN

Attorney(s) for Local 28

Office and Post Office Address

ONE PENN PLAZA
NEW YORK, N. Y. 10001
(212) 736-7570

To

Attorney(s) for

The motion by defendant Local 28 for an order setting aside the Administrator's ruling regarding the meaning of the term "Pensioners" as it is used in the affirmative action program is denied and the finding of the administrator approved and confirmed.

The definition is meant to include those who [illegible] the sheet metal trade whether before or after [illegible] the last three years.

SO ORDERED.

May 13, 1976

Henry F. Werker
U. S. D. J.

FILED
MAY 17 1976
S.D.C.N.Y.
MAY 17 1976
MICROFILM

001423

the attorney(s) for *in thi*

action, at

the address designated by said attorney(s) for the purpose by depositing a true copy of same enclose in a postpaid, properly addressed wrapper, in a official depositary under the exclusive care an custody of the United States Postal Service with the State of New York.

.....

Type or Print Name Below Signature

Sworn to before me

this *day of* *19*

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, and THE CITY OF NEW YORK,

Plaintiffs,

- against -

LOCAL 638... LOCAL 28 OF THE SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL 28 JOINT APPRENTICESHIP COMMITTEE. . .SHEET METAL AND AIR CONDITIONING CONTRACTORS' ASSOCIATION OF NEW YORK CITY, INC., etc.

Defendants.

ADMINISTRATOR'S REPORT

Introduction

The following report* has been prepared by the Court appointed Administrator in order to apprise both the Court and the parties of the Administrator's views on what has been accomplished since September 2, 1975 when the Court's Order and Judgment was filed in this case.

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* This report does not contain a detailed factual account of what has occurred since September 2, 1975, rather it is a statement of the Administrator's concerns after eight months under the Court's Order. All correspondence between the parties and the records of formal hearings are incorporated by reference into this report.

Administrator's Function

The Administrator was appointed by the Court for four basic purposes: (1) To provide overall supervision of Local 28 and the JAC to insure compliance with the terms of the Court Order; (2) To prepare and implement an affirmative action program which would insure that non-whites were given nondiscriminatory membership and employment rights, and that the defendants took appropriate steps to reach the goal of a non-white membership of 29% by 1981; (3) To resolve any disputes which may arise as to interpretation or implementation of the AAP and the Order and Judgment; and (4) To determine back pay claims.

Overview

In carrying out the functions deliniated above the Administrator has found that progress has been far below his original expectations. Since September 2, 1975, the non-white population of Local 28 has barely increased despite the giving of a journeyman test, and apprenticeship test; and the implementation of a costly recruitment advertising campaign for those tests. There is little question that the first interim goal of the AAP will not be met by July 1, 1976.

The reasons for the failure to even come close to the goal fall into three areas: First, the economic conditions in the building trades has drastically restricted employment opportunities. Without jobs being available it is almost

impossible to recruit non-whites who would have to pay union dues (approximately $23 per month) without receiving any benefits. In fact, of the seventeen non-whites who passed the October 11, 1975 journeyman test not one chose immediate admission to the union -- rather they all selected the AAP deferral option.

Second, the union and JAC have availed themselves of their legal right to request hearings before the Administrator, and to appeal his decisions to the Court. As a consequence, there is a fairly substantial delay between when an action is requested and when said action occurs. While the defendants have done no more than they are legally entitled to do, it might have been better had the Administrator been granted, at least in some areas, authority to render final order except to the extent that such orders are clearly arbitrary or beyond the scope of his powers.*

---

* Under the existing Court Order the parties have the right to appeal any order or directive issued by the Administrator. Consideration should be given to amending the Order and Judgment to limit appeal rights. For example, the question of the definition of "pensioners" might have been left to the Administrator. Such an amendment would certainly not prejudice the parties where it is alleged that his decision is arbitrary or beyond the scope of his authority e.g. the JAC allegation that the Administrator has exceeded his authority by drafting proposed back pay rules which includes apprentices in the eligible class would certainly not be barred. Precedent for a limited appeal right exists in the Lathers, Local 46 case wherein George Moskowitz is granted, by virtue of the Consent Decree, authority to render final orders.

Third, the Second Circuit, by disapproving of the non-white preference to achieve the 29% goal has, in effect, denied the Administrator the only realistic means of reaching the court approved goal. In other economic times a major recruitment campaign would have been a reasonable method of insuring a substantial non-white pool. However in 1976, and probably for many years to come, the union's unemployment situation is going to be a deterrent for all persons interested in membership -- white and non-white alike.

Journeyman's Examination

Pursuant to the Order and Judgment Local 28 held a hands on practical journeyman test on October 11, 1975. This test was not validated at the time it was given nor has evidence of its validation for future use been provided to the Administrator as of the date of this report. In preparation for the test Local 28 was required to engage in an extensive, and expensive, advertising and recruitment campaign in the miniority community. A professional advertising firm was retained and ads appeared both in the newspapers and on radio stations which had a substantial non-white audience. Additionally, mailings of posters, informational material, and test applications were made to numerous groups who are concerned with minority employment. The cost of this campaign was in excess of $9,000 to the union. While 161 persons filed applications, on the day of the test only 102 applicants completed the test. Of that number 36 passed the test.

-- 17 non-whites and 19 whites.

The union, thereafter, made an application to the Administrator to defer the admission of those journeyman applicants who passed the test. After a hearing on the record the Administrator ordered the union to admit all non-whites who had passed the test. The union proceeded to offer admission to all persons who passed the test on the grounds that it was going to be union policy that any rights extended to non-white by virtue of the Court Order of the AAP would also be extended to whites.

None of the 17 non-whites who passed the test elected to join Local 28. Instead they chose to exercise their membership deferral rights under the AAP. Consequently there was no increase in the non-white membership of Local 28.

The next journeyman test has not yet been scheduled, but under the AAP it is supposed to be given this Spring.

Apprenticeship Test

Pursuant to the Order and Judgment and AAP the JAC gave an apprenticeship test on December 13, 1975. This test, although supposed to be validated, was not validated; nonetheless, Judge Werker ordered that a mechanical comprehension test and a mechanical aptitude test be given and scored in a ranked order for selection purposes since, at that time, there was a protective two list system in effect thereby preventing an adverse impact in the event that non-whites did not perform as well as whites. (An arithmetic test was also given however it was given for validation

purposes only).

The JAC, pursuant to the Order and Judgment, had also proposed that a "read and follow directions test" be given. However, the Administrator ordered that it not be given after serious question was raised as to whether the test did what its name implied or if it was actually a reading comprehension test.

Pursuant to paragraph 30 of the AAP, and after failure of the parties to agree, the Administrator established a ratio of three non-whites for ev ry two whites for entry into the apprenticeship program. The ratio was appealed to Judge Werker who upheld it, and then to the Second Circuit, which at first requested the parties to resolve the matter by stipulation (which the parties did by agreeing to admit 66 apprentices, 33 non-white and 33 white) and then later ruled on the propriety of the 3:2 ratio as part of the original appeal on the Order and Judgment. As a consequence of the Second Circuit's ruling the "preference" was barred.

Although the parties agreed to indenture 66 apprentices, as of the date of this report only 53 have, in fact, been indentured. Of that number approximately 46 have been able to obtain limited on-the-job training. At the time the parties agreed to indenture 66 apprentices both the Administrator and the plaintiffs had been led to believe that the employers would have positions for 33 first term apprentices. The 66 indentured apprentices were to work on a rotation

schedule based upon one month on and one month off. When it came time for actual placement, however, only 14 positions were available to be filled.

It should be noted that the employers actually requested 23 apprentices originally, but the union blocked the placement of nine apprentices on the grounds that the employers' requests were not proper. The union position appears to be that since the specific employers involved had either: (1) recently laid off journeymen, (2) were already on a worksharing basis for the whole company, or (3) had recently laid off upper term apprentices, these employers were not entitled to receive first term apprentices. Local 28 contended that to place first term apprentices under these conditions would be in effect, "bumping". The Administrator has requested that both the employers and the union make their respective positions known so that the Administrator can determine if hearings should be held on this issue.

The result of a scarcity of jobs, and the union's position on apprentice placement, is that the JAC has implemented a three platoon rotational system of one month on and two months off. The ultimate consequence of this situation is that there has been almost no discernable forward movement in bringing non-whites into the union.

Affirmative Action Program

Immediately after appointment, the Administrator began a series of meetings with all parties in an effort

to prepare an affirmative action program. This program was to be the plan by which the ultimate goal of 29% would be reached. When the parties failed to agree upon the terms of an AAP the Administrator drafted one. After comments from the parties, the Court ordered a redraft, and ultimately ordered the new draft to be implemented. This Program is currently on appeal.

Back Pay

The Administrator has sent out two sets of proposed back pay rules. The first was prepared under the Order and Judgment, and the second pursuant to the modifications contained in the Second Circuit's Decision. The second set superceeded the first and the Administrator is waiting for comments, due May 7, before taking further steps with regard to the back pay claims.

Conclusion

The purpose of this discrimination suit was to open the membership rolls of Local 28 and the JAC so that non-whites would have an equal opportunity for employment in sheet metal. This purpose, embodied in the Court's Order and the AAP, is clearly being thwarted when the non-whites are unable to obtain the training which would enable them to become journeyman members of Local 28. While no one challenges the contention that the building trades are suffering severly depressed economic conditions, and a great number of sheet metal journeymen are currently unemployed, the fact remains that unless training opportunities are afforded non-whites

today, the non-white population of Local 28 will be far below the court's goal five years from now when the construction industry may be in a revival period.

The combination of depressed economic conditions, lack of validated tests (with no likelihood of validation in the forseeable future), and the Second Circuits' disapproval of a preference for entry purposes, creates an exceptionally difficult problem for the Administrator and the plaintiffs. This problem while severe in its own right, is compounded by the unresolved appeals. It is therefore unlikely that any coherent picture will emerge until, at least, the pending appeals are decided.

Dated: April 21, 1976

David Raff
Administrator

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, and THE CITY OF NEW YORK,

Plaintiff,

-against-

71 Civ. 2877 (HFW)

LOCAL 638 . . . LOCAL 28 OF THE SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL 28 JOINT APPRENTICESHIP COMMITTEE, . . . SHEET METAL AND AIR-CONDITIONING CONTRACTORS' ASSOCIATION OF NEW YORK CITY, INC., etc.,

Defendants.

NOTICE OF MOTION

LOCAL 28,

Third-Party Plaintiff,

-against-

Oral Argument Requested

NEW YORK STATE DIVISION OF HUMAN RIGHTS,

Third-Party Defendant.

LOCAL UNION 28 JOINT APPRENTICESHIP COMMITTEE,

Fourth-Party Plaintiff,

-against-

NEW YORK STATE DIVISION OF HUMAN RIGHTS,

Fourth-Party Defendant.

S I R S :

PLEASE TAKE NOTICE, that upon the Affirmative Action Program and Order, dated November 13, 1975, the Defendant Sheet Metal Workers International Association, Local Union

No. 28 ("Local 28") will move this Court before the Honorable Henry F. Werker, United States District Judge, in Chambers 2904 of the United States Court House, Foley Square, Borough of Manhattan, City and State of New York, on the 12th day of July, 1976 at 10:00 o'clock in the forenoon of that day, or as soon as counsel can be heard, for an Order setting aside the decision of the Administrator (a) that a journeyman in good standing of Local 28 is presumptively qualified for a position on an Examining Board to determine admissions to Local 28 on the basis of experience and (b) that Charles Saunders, a Black, proposed by the plaintiffs and William Gonzales, Spanish-surnamed, proposed as Chairman by the Administrator, are qualified as a two-third (2/3) majority for such Board, on the grounds that said decision is unreasonable, arbitrary and inconsistent with and contrary to the Decision and Order herein of the Circuit Court of Appeals, dated March 8, 1976.

PLEASE TAKE FURTHER NOTICE, that answering papers, if any, are required to be served and filed on or before July 2, 1976.

Dated: New York, N. Y.
June 14, 1976

Yours, etc.,

SOL BOGEN
Attorney for Defendant
Local No. 28
One Penn Plaza
New York, N. Y. 10001
(212) 736-7570

TO: HONORABLE ROBERT B. FISKE, JR.
United States Attorney
1 Saint Andrew's Plaza
New York, N. Y. 10007

Att: Taggart D. Adams, Esq.
Assistant United States Attorney

HONORABLE W. BERNARD RICHLAND
Corporation Counsel
Municipal Building
New York, N. Y. 10007

Att: Ellen Kramer Sawyer, Esq.
Assistant Corporation Counsel

HONORABLE LOUIS J. LEFKOWITZ
Attorney General
Two World Trade Center
New York, N. Y. 10047

Att: Dominick Tuminaro, Esq.
Assistant Attorney General

ROSENTHAL & GOLDHABER
44 Court Street
Brooklyn, N. Y. 11201

Att: William Rothberg, Esq.

DAVID A. RAFF, ESQ.
49-51 Chambers Street (Room 220)
New York, N. Y. 10007

001485

STIPULATION

It is stipulated by counsel that should additional pages of the transcript be necessary for inclusion in the Appendix that a Supplemental Appendix will be filed in the Court.

Chrono file

TRA:cbm
70-1674

October 10, 1975

The Honorable Henry F. Werker
United States District Judge
Southern District of New York
United States Courthouse
Foley Square
New York, New York 10007

Re: EEOC v. Local 23
71 Civ. 2877

Dear Judge Werker:

This letter will constitute the comments and objections of the EEOC to the proposed Affirmative Action Program ("AAP") submitted to you and circulated to the parties. We have been advised by a telephone call from Mr. Raff that these objections should be submitted to you by 5:00 P.M., October 10.

The EEOC has three substantive objections to the draft submitted by Mr. Raff. In addition, we suggest certain non-substantive changes to clarify the drafting or correct typographical errors. These latter changes are set forth at the end of this letter.

1. We believe provision should be made in Paragraph 17 for a return of a pro-rated share of the three months dues paid for the purpose of obtaining conditional membership if the application submitted to the Administrator is denied and the applicant is unable to become a member of Local 23. It seems clear that a person should not pay monthly dues for months in which he is not a member of the union. This particular subject was not discussed at our conferences and therefore this objection should be considered a new suggestion.

We propose the following language at the end of Paragraph 17:

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> "If a conditional member is terminated without becoming a regular journeyman member of Local 28 he shall be entitled to a return of an appropriate share of the three months dues previously paid representing the time he was not a regular or conditional member of the union".

2. We suggest that the language set forth below be inserted at the beginning of the last sentence of Paragraph 30, in lieu of the phrase, "In arriving ... the Apprentice Program,":

> "For the purpose of assuring that white applicants are accorded an opportunity to be accepted into the Apprentice Program in reasonable numbers,"

This change clarifies the purpose of this sentence.

3. The plaintiff EEOC objects to the formulation of the program for Advanced Apprentices which is set out in Paragraphs 33 through 35 of the AAP. Our objection is not to the general concept but is focused on the structure of the proposal contained in Paragraph 35 which we think is both unworkable and unwise. Paragraph 35 is unwise because it imposes a preference on top of a preference and results in a significant dilution of the well-considered and well-accepted means of entry to Local 28 through a validated apprentice testing program. The testing program is designed to be a professionally developed and valid means for selecting apprentices (AAP ¶ 28) and a means for providing a preference to non-white applicants in furtherance of the Court's order of affirmative action (AAP ¶ 30). A ratio of non-whites to whites will be established prior to the test (AAP ¶ 30). Past experience tells us that many qualified applicants, both non-white and white, will be turned down because of the upper numerical limits that the Apprentice Program and the industry can absorb.* In addition, a number of well-qualified whites will be rejected because of the ratio. It seems to us that a further ratio of one advanced apprentice (who may not have taken the test) to one first term apprentice (who has taken the test) eliminates most of the effect of test process, and is therefore ill-conceived.

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* In 1973, 1735 applicants took the apprentice test. In 1971, 1300 applicants took the test. Only 224 apprentices were selected from this group of over 3000.

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Furthermore, we believe the structure established by Paragraph 35 is poorly defined and unworkable in practice. The ultimate result, we believe, would be unnecessary divisiveness and conflict. Assuming the establishment of a ratio of 1:1 pursuant to Paragraph 30 the present structure foresees a maximum of 75 advanced apprentices (non-white) being admitted by July 1, 1976 along with 75 non-whites admitted on the basis of their test scores. There is no provision for selection among these advance placement applicants if there are more than 75 non-whites eligible for advance placement. Furthermore it raises the possibility that one non-white who scores lower on the test than another non-white would be admitted in preference to the other. For administrative and policy reasons we believe this type of preference should be eliminated where possible.

We suggest that those applicants eligible under Paragraph 33(a) be admitted solely on the basis of their test scores and those applicants eligible under Paragraph 33(b) be admitted at such times and in such numbers as the Administrator may direct. We agree that any persons so admitted should be counted as set forth in Paragraph 35(b). This structure will permit the Administrator to evaluate the numbers of eligible persons for advanced placement and the terms for which they are eligible thus giving him an opportunity to slot candidates appropriately.

We suggest therefore that Paragraph 35(a) be amended to read as follows:

> "Apprentices shall be selected for advanced standing in the following manner: those who meet the requirements of Paragraph 33(a) shall be admitted in accordance with the provisions of Paragraph 31(b); those who meet the requirements of Paragraph 33(b) shall be admitted in such numbers and at such times as determined by the Administrator."

We would also strike the phrase "subject . . . paragraph (sic) 35" from Paragraph 31(b)

* * *

The following is a list of corrections and clarifications:

page 2, ¶2, line 2: should be "establishes"

page 3, ¶5, line 1: insert "the" before "approval"

page 4, ¶7, line 2: should be "Paragraphs"

page 5, ¶7(b)(i): second sentence should read, "said ratio shall be agreed upon by the parties, but in no event shall the ratio be less than one non-white for every white"

This change clarifies the meaning of the sentence. Similar changes should be made in ¶14 (b)(i).

page 6, ¶7 (b)(ii), line 10: should read, "test to be"

page 9, ¶13, first sentence should read, "The 'hands-on' journeyman test shall be graded by a Board of Examiners of three members knowledgeable in sheet metal comprised of a representative . . ."

page 15, ¶25, line 9: "...the age of 30) and for non-whites not over the age of 35 applying..."

Respectfully yours,

PAUL J. CURRAN
United States Attorney

By: _____
TAGGART D. ADAMS
Assistant United States Attorney
Chief, Civil Division
Telephone (212) 791-0051

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ROSENTHAL & GOLDHABER
COUNSELORS AT LAW
44 COURT STREET
BROOKLYN, N.Y. 11201

(212) 237-9559

BENJAMIN ROSENTHAL (1905-1969)
MAX M. GOLDHABER
RICHARD F. GOLDHABER
WILLIAM ROTHBERG
ARTHUR M. GABOR

LONG ISLAND OFFICE
150 BROAD HOLLOW ROAD
MELVILLE, N.Y. 11746
(516) 421-2468

October 14, 1975

The Honorable Henry F. Werker
United States District Judge
Southern District of New York
United States Courthouse
Foley Square
New York, New York 10007

Re: EEOC vs. Local 28
71 Civ. 2877

Dear Judge Werker:

I write to set forth comments on behalf of my client to the objections interposed by the City of New York to the Affirmative Action Plan submitted by the Administrator.

Paragraph 30 - There is no need to establish a minimum ratio. This paragraph clearly sets forth the procedure wherein it allows the Administrator to establish the ratio if the parties cannot agree. There need not be a particular ratio established as a minimum in advance. There are many factors which must be considered, such as the attrition rate of Local 28, the number of minorities who enter journeyman status through the examination, etc. Before a ratio can be determined which would best implement the goals of the Affirmative Action Program, it is best to evaluate these factors on a regular and continuing basis rather than set a minimum ratio.

I would support the comments of the United States Attorney in connection with the second aspect of this paragraph, wherein he proposes additional language clarifying the purpose of the paragraph.

Paragraph 32 - A physical examination is an important requirement for entering the sheet metal trade. Apprentices work at great heights in high rise constructions, with power tools and machinery, and with fellow workers. Any

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disabilities which are not detected could seriously endanger the apprentice as well as his fellow worker. It is for this reason that the JAC requires a thorough physical examination by a competent health organization. We have worked with Executive Health, Inc. who have met the needs and requirements of our industry in this regard.

We do not look to have the cost become a barrier for admission to the JAC and this was so indicated by the JAC in discussions with the parties and the Administrator in connection with the development of the program. We stated that any applicant who was not able to pay the physical examination fee at the time the examination is given, could have said payment deferred. In practice, in this situation, the JAC would pay the fee for such applicant and would have the applicant reimburse the JAC over a period of time after the applicant has commenced employment. We do not see this as any hardship or burden.

We are all well aware of the deficiency in medical care available to the poor and would strongly question the thoroughness of a physical examination for which there is only a $3.00 fee. Accordingly, it is important that the JAC have control over the extent of the physical examination and would be opposed to having applicants provide various and sundry certificates.

Paragraph 36 - We would object to the deletion of this paragraph from the Program. Its inclusion clarifies an area and avoids potential conflict in the future.

Paragraph 39 (d) - We feel that the language of the Plan as proposed by the Administrator is more than adequate to meet the needs of the Plaintiff. Practice has shown that most apprentices leave the program without giving any notice, either to the JAC or their employer. The JAC becomes aware of such action only when notified that the apprentice has not reported to work for some period of time. Attempts then made by the JAC to locate the apprentice have generally been futile. To impose an affirmative burden on the JAC to conduct exit interviews where practices indicated, this would not be possible, and would serve no useful purpose.

Paragraph 45 (a) - I would strongly oppose the language proposed by the City in this regard. The Administrator's language is broad

October 14, 1975

and all encompassing and gives him the authority to decide any questions of interpretation and claims of violations of the order, judgment and program. It further sets forth that he can act on his own initiative or at the request of any party or interested person. It would seem that this language would more than meet the needs of the City.

More specifically, the City includes in sub-paragraph V, an item which is not part of many of the aforementioned documents, namely the establishment of job seniority. This goes well beyond the scope of the aforementioned documents. The employers, as party defendants, have an obligation to see that the minorities do not bear a disproportionate burden of the unemployment. This need not be done through a system of job seniority which has never been the practice in the industry.

It would also seem that enumeration of specific items could be construed to limit the authority of the Administrator wherein the general language as submitted by the Administrator would be all encompassing.

I have no objection to comment #3 as submitted by the United States Attorney which concerns itself with the program for advanced apprentices.

Very truly yours,

ph

William Rothberg

c.c. David Raff, Esq.
Taggart D. Adams, Esq.
Dominick Tuminaro, Esq.
Sol Bogen, Esq.
Beverly Gross, Esq.✓

The City of New York

LAW DEPARTMENT
MUNICIPAL BUILDING
NEW YORK, N. Y. 10007

XXXXXXXXXXXXXXXXXXXXXXXXXXXXX
W. BERNARD RICHLAND, CORPORATION COUNSEL

October 10,1975
BY HAND

Hon. Henry F.Werker
United States District Judge
United States Court House
Foley Square
New York, New York 10007

RE: E.E.O.C. and City of New York
v.
Local 28 Et al, 71 Civ. 2877 (HFW)

Dear Judge Werker:

In accordance with the schedule established by Mr. Raff in the referenced case, the City hereby sets forth its objections to the proposed Affirmative Action Program as submitted by the Administrator.

1. Paragraph 2:

The City proposes that all pensioners be considered as union members for purposes of measuring compliance with the Program's goals for non-whites and not merely those pensioners who worked in the previous three year period. The union estimates there are currently 753 pensioners, one of whom is believed to be non-white.

Pensioners have the right to vote at union meetings, including election meetings. They thereby have an impact upon the selection of union leadership and the determination of union policy. While they are not fined for failure to vote in a union election, as are non-pensioner members, their vote carries as much weight as that of other members. Moreover, union policy is not made only at election meetings. Mr. Bogen indicated, for example, that he was required to obtain membership approval for commencing the advertising campaign ordered by the Court. Further, it is common knowledge that "voluntary" assessments for legal fees, political endorsements and contributions, and similar matters, are voted on at union meetings. In addition, testimony at the trial reflected that a myriad of Executive Board proposals require ratification by a vote of the membership. This right of participation laudable as it is, necessarily dilutes the impact of the non-whites upon union policy. These considerations, as well as the right of pensioners to rejoin the active work force, requires that this group as a whole be considered "members" against which the achievement of

goals is to be measured.

Therefore, the City proposes that the words "who have been employed as sheet metal workers within the last three years" be deleted.

2. Paragraph 10:

The City proposes that an additional sentence be added after the unnumbered paragraph at the top of page 8, as follows:

> "Recently registered" means that the apprentice class in which the person was registered at the time he left the program, has not yet been graduated.

3. Paragraph 17:

The payment of $100 toward the initiation fee plus three months dues (currently $20 per month) places an untold burden upon non-whites who, as the Court found, have long been denied union admission and, therefore, work opportunity. This is a particular hardship since the $160 is required to be paid before the individual has earned any wages. The City was intimately involved in the recruitment of applicants for the October 11 test through the Recruitment and Training Program, Inc., a nationally recognized minority organization pre-eminent in the field of construction trades recruitment and funded by the United States Department of Labor for this purpose. Seventeen non-white individuals required R.T.P. grants to cover the $25 (non-refundable) filing fee. However, such grants are problematical when the amount is of the magnitude of $160, and many applicants who were discouraged from even applying because of the $25 fee will be lost to the Program by the prospect of having to lay out such a large amount of money (See attached Roffle affidavit).

Since the proposed program delays for only 30 days a final determination by the Administrator, the City believes that 1/24 of the current initiation fee, or $56, plus one month's dues in advance is all that should be required. We therefore propose changing "$100 and three months dues" to "$56 and one month's dues" which represents a major commitment for a non-white who has spent enough time in the trade to qualify as a journeyman but for the first time is being given the opportunity to join the union.

4. Paragraph 30:

The City strongly objects to the omission in this paragraph of a floor on the non-white to white ratio which the parties (or the Administrator) will establish. There must be a minimum ratio below which there is no discretion, else the subject will be a matter of debate each year, leading to objections, motions and appeals and consequent delays in the implementation of the Program. A floor is established for the ratio of admission of journeymen (paragraphs 7 and 14) and should similarly be established for apprentices.

Further, the City objects to the language limiting the percentage of non-white apprentices to 60% of the total apprentice program and 70% of any class or term. The apprentice program will be a major source of entry to the union for non-whites. There are eight apprentice classes and it is anticipated that in the early stages of the Program the non-whites will be more heavily represented in the early grades than the later grades. It is conceivable that any given class might have to be non-white in greater percentages than those proposed, particularly if there is a deficit in the goals of the previous period. Moreover, the apprenticeship program was 100% white for over 50 years; it is difficult to justify an objection to an occasional predominantly non-white class following this history of total exclusion. In addition, the City believes it inappropriate for an affirmative action program which is premised on findings of discrimination against non-whites to contain quantitative maximums on the relief afforded them.

The City therefore proposes that paragraph 30 be amended to delete the last sentence and to insert a new sentence after the first sentence, as follows:

> "This ratio will be established with the purpose of fairly implementing the interim and final goals set forth in Paragraphs 1 and 2 but in no event shall said ratio be less than one-to-one".

5. Paragraph 32:

The City rejects the proposal that the cost of physical examination must be borne by successful applicants. This is a dramatic departure from previous practice of the JAC, which heretofore paid the costs of the physical exam. It would be most ironic if, as a result of civil rights litigation, apprentices were for the first time required to pay for their own physical examination, and this on top of a 50% increase in the filing fee over previous years. While the physical examination certainly produces a social benefit, in this case it is primarily for the benefit of the JAC which should, as in the past, bear the cost.

Moreover, JAC will require the examination to be taken at a designated private examining service which will charge $34 per applicant. JAC utilizes this service because it tests for drug presence as well as offering what JAC believes to be a quality physical. There has been no showing by JAC that a similar examination is not available at a lesser cost. In fact, recent inquiry made by the City through R.T.P. has ascertained the availability of quality physicals with a drug-presence component at a substantially lower cost. (See attached Ross affidavit) Moreover, the applicant should be free to be examined by any licensed physician so long as the examination establishes his physical fitness for sheet metal work and to obtain that service at a cost that is not pre-established by the JAC's arrangement with a private concern.

The City proposes, therefore, that the second sentence of paragraph 32 be amended so that "JAC" is substituted for "successful applicants". In the alternative, the City proposes a new second sentence, as follows:

"Successful applicants must produce proof satisfactory to the JAC of a recent medical examination establishing their physical fitness for sheet metal work and containing a statement as to the presence or absence of drugs. A successful applicant electing to utilize a JAC-recommended medical facility may do so at no charge to the applicant."

6. Paragraph 36:

The City believes that this provision is inappropriate for inclusion in an affirmative action program. The JAC is free to take any actions it is empowered to take and this Program does not preclude such actions. We note that a similar provision included in the last previous draft, relating to procedures established by paragraph 16, has been omitted by the Administrator in this proposal. We believe that paragraph 36 was included by inadvertance and, in any event, has no place in this Program.

7. Paragraph 39 (d):

The City feels that it is necessary that JAC make diligent efforts to locate non-white apprentices who leave the program by other than action of JAC. Our experience in other construction trades indicates the existence of harassment of non-whites by fellow employees, which has led qualified men to leave the trade. Further, misunderstandings and failure of communication is a common problem. The City Commission on Human Rights has found that exit interviews where possible, are a valuable technique for avoiding such difficulties. In any event, the information derived from this type of follow up can be of great value to JAC in minimizing turnover and in assuring the most effective administration of the apprentice program. Moreover, Mr. Rothberg has indicated that efforts are, in fact, made to contact these individuals. It should be no burden to record these efforts and their results. We propose replacement of the words "if known by JAC' with "as ascertained by an exit interview diligently attempted."

8. Paragraph 45 (a):

The City proposes the deletion of paragraph 45 (a) and the substitution of the following:

"The Administrator shall make final determinations in the event of a dispute relating to the operation of the Order and Judgment and of this Program, arising between the parties, between an individual and the union, between an individual and the JAC, and between an individual and a contractor. His authority shall include, but not be limited to the resolution of disputes regarding:

(i) maintenance, availability and production of documents;

(ii) frequency of the apprentice or journeyman's tests required under this Program;

(iii) the ratio of non-whites to whites for entry into the union and apprenticeship program;

(iv) amendment of the Program;

(v) work referrals, including but not limited to the failure of the union to refer a non-white, the failure of a contractor to accept a non-white referral or direct application for employment when there are job openings, and the layoff of any non-white workers out of job seniority for any reason save good cause shown;

(vi) the validity and/or administration of a journeyman or apprentice test;

(vii) eligibility to take a journeyman or apprentice test, and/or refusal of appropriate appointment as a journeyman or apprentice;

(viii) amount and terms of payment of an initiation fee;

(ix) back pay claims

While the above, at first blush, appears redundant of the Order, it should be noted that the injunctive provisions of the Order are phrased as negative prohibitions. We believe it important to establish affirmatively what is only implied in the Order concerning the Administrator's authority to monitor all practices affecting the treatment of non-whites and the equitable distribution of work opportunities. For example, paragraph 44 of the Program, absent the language proposed above, could be read to preclude the Administrator from hearing complaints of unfair treatment of non-whites in work referral for the first year of the Program.

9. Appendix A:

The New York City Board of Education should be asterisked as "information only", since it is not a manpower source. Also, both the New York State and the United States Department of Labor, Bureau of Apprenticeship Training, should be added to the list, each with an asterisk, as appropriate agencies to receive notices of examinations. The New York State Division of Employment (Department of Labor) is incorrectly titled. It should be changed to read "New York State Department of Labor, Division of Employment".

Respectfully submitted,
W. BERNARD RICHLAND
CORPORATION COUNSEL

by: /s/
Beverly Gross
Assistant Corporation Counsel

The City of New York

LAW DEPARTMENT
MUNICIPAL BUILDING
NEW YORK, N. Y. 10007

W. Bernard Richland, Corporation Counsel

DELIVER BY HAND

September 23rd, 1975

David Raff, Esquire
Suite 220
49-51 Chambers Street
New York, N.Y. 10007

Dear Professor Raff:

The attached draft is submitted jointly by the City and the United States in accordance with your request of September 15, 1975 that the previously submitted draft affirmative action programs be conformed in terms of contents, style and paragraph numbering.

Copies of this letter, along with copies of the conformed draft, will be delivered to counsel for all the parties this date.

Cordially,

Beverly Gross

Beverly Gross
Assistant Corporation Counsel

cc: By Hand

Sol Bogen, Esq.
One Penn Plaza
New York, N.Y.

Rosenthal & Goldhaber
44 Court Street
Brooklyn, N.Y.
Att: Wm. Rothberg, Esq.

Paul J. Curran
U.S. Attorney for the Southern District of New York
One St. Andrews Plaza
Att: Taggart Adams, Esq.

Louis J. Lefkowitz
Attorney General
Two World Trade Center
New York, N.Y. Att: Dominic Tuminaro, Esq.

Conformed US - City Draft (9/23/75)

AFFIRMATIVE ACTION PROGRAM

Introduction

1. This Affirmative Action Program ("Program") is adopted pursuant to the Decision and Order dated July 18, 1975 and the Order and Judgment dated ~~August~~ September 28, 1975 and filed in this action on ~~August~~ September 29, 1975. The goal of this Program is to assure that the non-white* membership in Local Union No. 28 of the Sheetmetal Workers' International Association ("Local 28") reaches a minimum level of 29% by July 1, 1981; to assure that substantial and regular progress is made toward this goal in each year prior to 1981; and to assure that non-white members of Local 28 and non-white apprentices of Local 28 share equitably in all employment opportunities afforded to members of Local 28.

2. For the purpose of reaching the above goal of 29% by July 1, 1981 this Program establishes as interim percentage goals for the non-white membership of Local 28 the following:

	U.S.	City
July 1, 1976	9-11%	10-12%
July 1, 1977	13-15%	14-16%
July 1, 1978	17-20%	18-20%
July 1, 1979	20-22	21-23%
July 1, 1980	23-25	24-26%

Each of the above percentages shall be measured against the total membership of Local 28 as of each interim goal date respectively and the final goal date. For the purpose of measurement, total membership shall include all journeyman members, all pensioners** who have been employed as sheetmetal workers within the last three years, and all members or participants in the Local 28 Apprentice Program ("Apprentice Program"). The parties to this action and the Administrator are to implement this Program so that these interim goals may be attained. The Administrator shall periodically review the progress toward the attainment of these goals

*"Non-white" as used in the Program means black and Spanish surnamed individuals.

** Pensioner" as used in the Program means any individual who receives benefits from the Local 28 pension program.

and take such action as he is empowered to take under the Order and Judgment of August 28, 1975 to assure their achievement.

3. Admission to Journeyman membership in Local 28 shall be attained only through the following procedures:

a) successful completion of a 'hands-on' journeyman test administered pursuant to Paragraphs ~~5-14 of~~ this the Program; or

b) establishment of proof of the required experience in the sheetmetal trade pursuant to ~~Paragraph 15 of the~~ Program; or

c) completion of the Apprentice Program; or

d) transfer in accordance with the Sheet Metal Workers' International Union Constitution and Ritual ~~and the approval of the Administrator~~; or

e) organization of non-union shops.

4. Membership in the Apprentice Program shall be obtained only through the following procedures:

a) successful completion of an apprentice aptitude test as set forth in Paragraphs ~~21-32~~ this Program; or

b) ~~[~~U.S. entry through a special Apprentice Program as ~~set forth~~ in Paragraphs 33 through 35~~]~~]City-entry with advanced standing as set forth in ~~Paragraphs 33 through 35~~ this program]

Admission to Journeymen Status: Journeyman's Examination

5. Under the supervision and with approval of the Administrator, Local 28 shall administer a 'hands-on' journeyman's ~~examination~~ test on October 11, 1975 designed to test fairly and in a non-discriminatory manner the skills needed for a journeyman sheet metal worker. ~~This examination~~ That and its grading shall be in substance the equivalent of the 'hands-on' portion of journeyman's test given by Local 28 in November, 1969 as revised by a sheetmetal expert provided by the plaintiffs or the New York State Division of Human Rights. Disputes as to any proposed revisions shall be resolved by the Administrator. There shall be a ~~[illegible]~~ hiring list for this test of 225

6. Local 28 shall undertake a program of publicity and advertising and prepare, make available, and process applications relating to the October 11, 1975 'hands-on' journeyman's test in accordance with the standards and conditions set forth heretofore by the parties and the Administrator. The administration and grading of the

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Paragraph 7 is amended as follows: by adding the word "all" at the beginning of subsection(a) and inserting after the word "grade" in line 1 of subsection (a) the following ", up to a total of 300 such applicants,"

and by adding the following language after the semicolon in subparagraph (a),

> "in the event that more than 200 ~~300~~ non-white applicants receive a passing grade and elect to exercise their rights to admission to journeyman membership under this Program the 200 ~~300~~ non-whites with the highest grades shall be admitted by December 1, 1975 the remaining non-white applicants shall be admitted in accordance with the provisions of subparagraph (b) of this paragraph."

and by amending section (ii) of subparagraph (b) to read as follows:

> "all applicants who receive a passing grade but who are not admitted pursuant to subparagraph (a) of section (i) of subparagraph (b) may be ordered admitted to journeyman membership by the Administrator at a time deemed suitable by him. White applicants who have received a passing grade and who are not admitted by March 1, 1976 shall be eligible for a selection priority over other white applicants at the time of the journeyman's test held in the Spring of 1976, or subsequent tests. Non-white applicants who have received a passing grade and who are not admitted pursuant to subparagraph (a) shall be admitted by July 1, 1976, if they so elect.

test shall be under the overall supervision of the Administrator and shall be accomplished and recorded in such a manner as to facilitate the professional development and validation of future "hands-on' journeyman's tests.

7. Under the following conditions all persons who receive a passing grade in the test described in Paragraphs 5 and 6, and who are physically fit for sheetmetal work shall be eligible for admission to full journeyman membership in Local 28 as follows:

a) non-white applicants who receive a passing grade shall be admitted to journeyman membership by December 1, 1975 in accordance with and subject to the provisions of Paragraphs 16-18 of the Program;

b) white applicants who receive a passing grade shall be placed on a list and ranked in descending order on the basis of their grades on the examination.

i) white applicants shall be selected for admission in the order of their ranking on the above described list on the basis of a ratio to the non-whtes admitted pursuant to section (a) of this Paragraph. Said ratio shall be agreed upon by the parties, but in no event shall the ratio of non-whites to whites be less than 1 to 1. Such ratio shall be designed with the purpose of implementing the interim goals set forth in Paragraph 2. If the parties cannot agree on a ratio by November 10, 1975 the Administrator shall establish such ratio by November 15, 1975.

ii) white applicants not admitted pursuant to section (b)(i) may be ordered admitted by the Administrator at a time deemed suitable by him, and if not admitted by March 1, 1976 shall be eligible for a selection priority over other white applicants at the time of the journeyman's test held in the Spring of 1976, or subsequent tests.

C. 8. Local 28 shall administer a non-discriminatory, 'hands-on' journeyman's test under the overall supervision and approval of the Administrator in the Spring of 1976 and at least once a year thereafter . The Administrator, after consultation with the parties, may apply to the Court

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to decrease the frequency of the tests consistent with the requirements of the interim goals set forth in Paragraph 2.

9. The journeyman's 'hands-on' test shall be professionally developed and validated in accordance with EEOC Guidelines. Within a reasonable time before the administration of each test (which shall not be less than four weeks unless good cause is shown), Local 28 shall furnish counsel for the parties and the Administrator with (i) a copy of a report demonstrating the validity of the test and (ii) a copy of the test to be administered, provided that counsel for the parties and the Administrator shall not distribute or disclose the contents of the test to any individual or organization except for the purpose of professional validation thereof.

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10. All qualified applicants shall be eligible to take the 'hands-on' journeyman test specified in this Program. A qualified applicant is defined as follows: any person who

a) has or will have attained the age of 22 by the date of the test, ~~but who is not over the age of 65 by that date.~~ and

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b) is a citizen or a lawful permanent resident alien, and

legally permitted to work in the U.S.

c) has resided in New York City or the counties of Westchester (N.Y) Nassau (N.Y) Suffolk (N.Y.), Passaic (N.J.) Bergen (N.J.) Hudson (N.J) or Essex (N.J.), for 60 consecutive days prior to the filing of an application, and

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9/21 Union (N.J.)

d) has one year of sheet metal work experience including but not limited to employment as a member in any branch of Local 400 of the Sheet Metal Workers International Association, sheet metal experience in the Armed Forces or vocational education or training related to the skills of a journeyman sheet metal worker.

to equal to all equalification of current apprentices

Riff will submit

11. Subject to the approval of the Administrator Local 28 shall develop a standardized application form for the 'hands-on' journeyman's test. Such forms shall include only the following:

a) provisions for the name, address, telephone number, social security number, age, sex and race or ethnic identification of the applicant (with a notation that information regarding race or ethnic identification is

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required solely for the purpose of compliance with the court order herein), and previous sheet metal experience.

b) information regarding the eligibility requirements, fee, date, time, location, and nature of the 'hands-on' journeyman's test.

12. Local 28 shall make available an application form for the 'hands-on' journeyman's test and a short description of the nature of the test in the following manner:

a) at the offices of Local 28, ~~and JAC;~~

b) by mail in response to inquiries and requests made by ~~letter or telephone;~~

c) in bulk to plaintiffs, City Department of Employment, the New York State Employment Service, Recruitment and Training Program, Inc., Fight Back, and the other governmental or community agencies listed in Appendix A.

Completed applications for the test shall be accepted by mail or delivery in person at the offices of ~~Local 28 and JAC.~~ Local 28 may establish, with the approval of the Administrator, a suitable cut-off date for the acceptance of applications. Local 28 may establish a fee for the taking of the 'hands-on' journeyman test consistent with the cost of administering such a test, ~~but in no event shall such fee exceed $25. Subject to the approval of the Administrator~~

13. The 'hands-on' journeyman test shall be graded by a ~~Board~~ Board of Examiners consisting of ~~a representative~~ chosen by Local 28, ~~a representative chosen by~~ the Contractors' Association and ~~a representative chosen~~ by the Administrator. Said Board of Examiners shall employ the passing grade level developed pursuant to the validation procedures set forth in Paragraph 9. All applicants shall be advised of their status by first class mail within 30 days of the test. Non-whites who ~~score between 30 and the passing grade on~~ the test shall be advised of their possible eligibility for advanced standing in the apprenticeship program.

14. (a) A qualified non-white applicant who passes the test and is physically fit to perform sheet metal work shall be admitted to journeyman status in Local 28 within 60 days of the test unless the applicant elects to defer admission pursuant to Paragraph 19.

Raff will submit

(b) A qualified white applicant who passes the test and is physically fit to perform sheet metal work shall be admitted to journeyman status in Local 28 in accordance with the following procedures:

Raff will submit

(i) within 20 days of the test the parties shall attempt to agree on an appropriate ratio of non-whites to whites to be admitted to journeyman status. This ratio will be established with the purpose of fairly implementing the interim and final goals set forth in Paragraphs 1 and 2 but in no event shall said ratio be less than one-to-one. If no agreement is reached within 20 days, the Administrator shall establish the ratio within 5 days thereafter

(ii) in accordance with the above ratio white applicants shall be admitted on the basis of the highest scores achieved on the 'hands-on' journeyman test;

Raff will submit

(c.) To the best of their ability the parties and the Administrator shall endeavor to set forth on the application form the most accurate estimate of the opportunities available to whites based on the number of preferred candidates pursuant to Paragraph 7 (b), the unmber of expected non-white candidates, and past experience.

15. Commencing January 1, 1976 non-whites who have had four years experience obtained in the United States or elsewhere in sheet metal work or employment reasonably related or similar to sheet metal work including experience in the Armed Forces, or vocational training related to the skills of a sheet metal worker shall be admitted to journeyman status in Local 28 under the following conditions: Such persons must be,

Raff will submit

a) residents of New York City, Nassau, Suffolk, and Westchester counties in New York State or Bergen, Union Passaic, Essex and Hudson counties in New Jersey for 60 days and

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pursuant to

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reduced initiation

16.(a) Upon proper application, a non-white eligible for admission to journeyman membership in Local 28 pursuant to Paragraphs 5 through 15 of this program may request ~~the~~ of Local 28's Executive Board that the Local 28 initiation fee be reduced pursuant to the provisions of Paragraph~~x~~ 22(d) of the Order and Judgment. Within 5 days of the receipt of such application, the Local 28 Executive Board shall render a decision in writing~~x~~ and notify the applicant, the Administrator and the parties of ~~the name and address of the applicant and the~~ disposition of the application. (Notice to Administrative parties shall include applicant's name + address) If ~~u~~such application is denied in whole or in part, or is not acted upon within five days of its receipt~~x~~ by the Execuitve Board, an application may be made to the Administrator who shall either grant or deny the request in writing after duly considering all the factors set forth in Paragraph ~~22~~d~~x~~ 22(d) of the Order and Judgment. In considering such an application the Administrator may require the submission of ~~sux~~ such information, documents or other data from either Local 28 or the applicant as he deems necessary.

Nothing in this paragraph shall preclude the Exec. Board from accepting + acting upon such applications from white applicants.

9/27

(b) Upon proper application a non-white eligible for admission to journeyman membership in Local 28 pursuant to Paragraphs 5 through 15 may request of the Local 28 Executive Board that payment of the Local 28 initiation fee be prorated over a period of time not to exceed two years. Within 5 days of the receipt of such application the Local 28 Executive Board shall render a decision on the application in writing and notify the applicant, the Administrator and all parties of the disposition of the application (the notification to the Administrator and the parties shall include the applicant's name and address) If such application is denied in whole or in part or not acted upon by the Executive Board of Local 28 within 5 days, an application may be made to the Administrator who shall either grant or deny the ~~request~~ application in writing and ~~shall~~ set such schedules and payments as he shall determine. The decision of the Executive Board of Local 28 and the Administrator shall be made having fully considered

etc.

b) between the ages of 22 and 65 years; and

c) physically fit to perform sheet metal work; and

d) establish to the satisfaction of a majority of a board comprised of a representative of the Contractors Association, Local 28 and three members chosen by the Administrator, that the applicant meets the required experience standard.

Appropriate publicity shall be undertaken at the direction and with the approval of the Administrator.

16. U.S. - Upon proper application a non-white eligible for admission to journeyman membership in Local 28 pursuant to Paragraphs 5 through 15 may request that the Local 28 initiation fee be reduced pursuant to the provisions of Paragraph 22(d) of the Order and Judgment dated August 28, 1975. Upon such application the Administrator shall either grant or deny the request after duly considering all the factors set forth in Paragraph 22 of the Order and Judgment. In considering such a request the Administrator may require the submission of such information documents or other data from either Local 28 or the applicant as he deems necessary.

City. The initiation fee for non-whites entering the union under this Program shall be computed as follows: the lowest fee charged any white individual in the year when they would have been eligible for membership in Local 28 on the basis of age. That year shall be determined by the average age of all graduates of the apprentice program for the last five years. Payments of the initiation fee shall not begin until the applicant commences employment with a Local 28 contractor. Payments may be made in such monthly installments as the Administrator shall determine upon application.

17. Upon proper application a non-white eligible for admission to journeyman membership in Local 28 pursuant to Paragraphs 5 through 15 may request that payment of the Local 28 initiation fee be pro-rated over a period of time not to exceed two years. Upon such an application the Administrator shall either grant or deny the request and set such

~~schedules and payments as he shall determine having duly considered~~ all pertinent facts, including, but not limited to, the following circumstances:

i) the financial circumstances of the applicant and Local 28;

ii) the present and future employment situation in the sheet metal industry in New York City in general;

iii) the liklihood and nature of future employment for the individual applicant;

no preclusion of multiple applications

N. Whenever an application is made under paragraph [illegible] and there is a waiting period before admission to membership in Local 28 [illegible] the applicant shall be admitted conditionally [illegible] $100 [illegible] dues,

pending the determination which shall be made within 35 days of the application to the admin. During such conditional membership for said 35 day period an applicant will be entitled to all the rights & privileges of regular journeyman membership.

Staff will submit

18. The rights or privileges accruing from journeyman membership in Local 28 shall not be diminished as a result of the procedures established under Paragraphs 16 and 17.

19. A person eligible for admission pursuant to Paragraphs 5 through 14 shall be permitted to defer such admission for up to two years from the time he is first entitled to be admitted. If an applicant invokes his right of deferral he shall be admitted on the same terms and conditions as he was previously entitled within 30 days of written notice to Local 28 that he seeks to be admitted.

20. Local 28 shall issue "permits" or "identification slips" only with the express written consent of the Administrator, and only on such terms and conditions as the Administrator, in his discretion, shall require including but not limited to requiring Local 28 to first solicit the members and/or apprentices of the Blowpipe Division, Local 400 to work within the jurisdiction of Local 28 on "identification slips" or "permits" before contacting any other individual including members and/or apprentices of other affiliated sister local unions or allied building trades local unions in order to solicit such individuals to work on 'permits' or 'identification slips'.

ADMISSION TO APPRENTICE STATUS

Apprentice Program

21. Local 28 JAC shall maintain an apprentice program of four years duration or less. The terms and conditions of the apprentice program shall be as set forth in the Collective Bargaining Agreement (identify), the Joint Apprenticeship Trust and Indenture, and the rules and regulations thereunder except where modified by the Order and Judgment, dated August 28, 1975, entered in this action, the provisions of this Program, or order of the Administrator pursuant to his powers under the Order or Judgment.

22. The apprentice program shall indenture no less than 100 apprentices by February 2, 1976. No less than 200 apprentices shall be indentured in each year thereafter up to and including 1981.

23. Apprentices shall be assigned for employment in a ratio of not less than one apprentice for every four journeymen working of the aggregate journeymen employed. Seniority shall not be a criterion for employment and apprentices shall be rotated for employment where necessary and feasible. The JAC shall make every effort to provide apprentices with classroom instruction, including evenings and Saturdays where necessary.

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during periods of unemployment, and shall credit such hours toward fulfillment of apprenticeship requirements. The JAC may authorize the accelerated advancement or graduation of any apprentice as it deems proper ~~with the approval of the Administrator.~~

24. Upon successful completion of the apprenticeship program, apprentices shall be promptly admitted to full journeyman membership ~~upon payment of the~~ which, upon application to the local is free. The balance due of the initiation fee, if any, may be paid on an installment basis for good cause shown.

~~25.~~ Applications shall be made available to and accepted from any qualified candidate. A qualified candidate is defined as follows: ~~any person who is deemed physically fit for sheet metal work and who has or will have attained the age of 18 years by the date of indenture of the next scheduled apprentice class and who is not older than 25 years of age (for veterans of active military duty the age limit is extended one year for each year of such duty up to the age of 30), [U.S. except that non-white applicants up to the age of 35 shall also be deemed qualified.~~ For the apprentice aptitude exam ination to be administered in November, 1975 only, JAC may require proof of completion of a tenth grade course of education.] Must be validated to continue.

26. With the approval of the Administrator JAC shall develop a standardized application form for the apprentice program. The application form shall include information about the date of the next class of apprentices to be indentured, and shall require only the following information of the applicant:

~~a)~~ Name, address and telephone number;

~~b)~~ Birth date and age;

~~c)~~ Social Security number;

~~d)~~ Extent of education;

~~e)~~ Sex;

~~f)~~ Race or ethnic classification; (with a notation that this information is required solely for the purposes of compliance with federal anti-discrimination statutes).

g) Military
h) Convictions & pending charges
i) Citizenship status

27. Application forms for the Local 28 JAC apprentice program shall be available at the offices of the JAC during normal business hours and at the offices of the organizations listed in Apprendix A at least 60 days before an examination. Application forms shall be made available by mail upon written [~~or telephone~~] request. Completed applications shall

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be accepted in person or by mail at the offices of the JAC. Application forms shall be made freely available to any governmental employment office and minority community organizations not listed in Appendix A upon request. The time for filing applications for a particular apprentice examination may be closed by the JAC at a reasonable time (not to exceed three weeks) before the date of the examination.

28. An apprentice aptitude examination shall be given ~~in~~ on December, ~~November~~ 1975 and at least once yearly thereafter at a date, time and location approved by the Administrator. The test shall consist of the following professionally developed and validated components: (1) a basic "read and follow directions" test designed to ascertain an applicant's ability to master and understand those written and verbal instructions, directions, and other communications necessary to participate in the apprentice program at the first year level; and (2) a mechanical comprehension test similar in substance, and scope to that mechanical comprehension test administered by JAC in April 1969. There shall be professionally developed and validated a qualifying score on the "read and follow directions" test designed to reflect the minimum ability necessary to participate in the apprentice program at the first year level. [with regard to the arithmetic test, see attached letter]

OK 9/26

holding on arith. test

29. Within ~~three~~ four weeks of the administration of an apprentice entrance test, JAC shall provide the Administrator and all parties with:

(a) the names, race identification, raw ~~and percentile scores~~ score and rank of all candidates on all tests; and

(b) the mean and median scores on all tests of all identifiable racial and ethnic groups among the candidates.

OK 9/26

30. Persons selected to be indentured as apprentices pursuant to Paragraph 22 shall be selected in accordance with a ratio of non-whites-to-whites [which in no event shall be less than one-to-one] which shall be established by agreement of the parties within 30 days after the tests results are known, or by the Administrator within 15 days thereafter if the parties fail to agree. The parties shall agree by November 10, 1975, what the ratio shall be for the class es to be indentured in February and June, 1976. If no agreement is reached the Administrator shall establish the ratio by November 15, 1975.

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31. In fulfillment of JAC's and Local 28's obligations under Paragraphs 22 and 30 apprentices chosen by means of the apprenticeship entrance test shall be selected from those who meet or exceed the qualifying score on the "read and follow directions" test in the following manner:

Ruff will submit

(a) the white apprentices shall be selected on the basis of the highest scores received on the mechanical comprehension examination among the white eligible qualified candidates;

(b) the non-white apprentices shall be selected on the basis of the highest scores received on the mechanical comprehension examination among non-white eligible qualified candidates.

32. Persons selected ~~in accordance with Paragraphs 30 and 31~~ for the apprentice program may be required to appear for orientation and a physical examination prior to being indentured. Additional persons may be invited to orientation and a physical examination by Local 28 JAC if that appears desirable. Persons selected in accordance with the above procedures shall be indentured as apprentices unless such indenturing is waived by them ~~in writing~~ or they are certified physically unable to perform sheet metal work by a medical practitioner licensed in New York State. Costs of physicals to be borne by successful applicant.

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~~U.S. Special Apprenticeship Program~~

City - Advanced Apprentices

~~33. U.S. - There shall be established by the JAC a special apprenticeship program open to non-whites over the age of 18 who are physically fit and have some experience as sheet metal workers, but in an amount which is not sufficient to qualify the individual for direct entry to journeyman status under Paragraphs 5 - 15. Members of the special apprentice program shall be entitled to all the rights, privileges, and other benefits accruing to a member of the regular apprentice program including work referral and assignment for work except as specified herein.~~

33. City - The JAC shall admit to the apprenticeship program with advanced standing, non-whites between the ages of 18 and ~~20~~ 35 who have six months or more experience in sheet metal work or trade education

but cannot perform at journeyman level ~~or who score between 30 and the passing grade on a "hands-on" journeyman's test administered pursuant to this program. The overall apprenticeship recruiting and publicity~~ campaign shall include a component directed toward advanced apprentices.

34. U.S. - Eligible candidates for the special apprentice program shall include:

a) a non-white scoring over 30 on a "hands-on" journeyman's test administered pursuant to this program; or

b) a non-white with six months of experience in sheet metal work which shall be verified by procedures established by the Administrator; or

c) such others as the Administrator shall determine.

34. City - One advanced apprentice shall be indentured for each non-white indentured in accordance with Paragraph 31(b) until the ~~list~~ of advanced apprentices is exhausted, and the numbers of such advanced apprentices shall be included in the total of non-white apprentices selected on the basis of the ratios established pursuant to Paragraph 30.

35. U.S. - Special apprentices shall be appointed upon the direction of the Administrator. Upon entering the special apprenticeship program each person shall be classifed according to his experience in the sheet metal trade or in comparable work. For each year of experience the special apprentice will receive credit for one year of apprentice training. In accordance with the appropriate credit received the special apprentice will be admitted to and become a part of the regular apprenticeship program at the advance-placement status to which the credit entitles him. A special apprentice shall be entitled to all pay, instruction, supervision, employment and other rights of a regular apprentice at the same level of training. The Administrator may employ a professionally developed "read and follow directions" test if he deems it necessary to select eligible candidates for the special apprentice program.

35. City - Each advanced apprentice shall be classifed according to his sheet metal experience. For each six months of experience the advanced apprentice will receive credit for six months of apprentice training. An advanced apprentice shall be entitled to all rights, privileges, and other benefits including work referral, pay, instruction, and supervision accruing to regular apprentices at the same level of training.

37. ~~36.~~ The parties and the Administrator shall make their best efforts to assure that white applicants are accorded an opportunity to be accepted into the apprentice program in reasonable numbers. Whenever the total population of the apprentice program reaches a non-white percentage of 60% or an individual term or class in the apprentice program has a non-white percentage of 70% the Administrator shall be empowered to adjust the ratio of non-whites to whites in order to assure the entry of sufficient numbers of qualified white applicants to reduce the percentages below the ~~specified~~ levels specified above.

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RECORDS

38. In addition to any other records or lists required to be maintained under the terms of this Program or the Order and Judgment of August 28, 1975, Local 28 and JAC as the case may be, shall maintain separately for whites and non-whites, records and lists containing the following information, beginning with the effective date of this Program.

OK 9/27 (a) Persons who request an application for or apply to take the hands-on journeyman's test described in Paragraphs 5 and 8;

OK 9/27 (b) Persons who take the hands-on journeyman's test described in Paragraphs 5 and 8;

OK 9/27 (c) Persons who pass the hands-on journeyman's test described in Paragraphs 5 and 8;

(d) Persons who apply for journeyman admission on the basis of experience, described in Paragraph 15;

(e) Persons who are admitted, and those rejected, for journeyman membership on the basis of experience, described in Paragraph 15;

OK 9/27 (f) Persons who seek or apply to transfer into Local 28 from an affiliated sister local union;

(g) Persons who inquire of Local 28 about the possibility of transferring into Local 28 from an affiliated sister local union;

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(h) Persons who inquire of Local 28 as to the availability of work opportunities with or through Local 28, including but not limited to inquiring about or seeking "permits"

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or "identification slips";

(i) Persons to whom "permits" or "identification slips" are issued or work opportunities with or through Local 28 are otherwise made available.

(j) Persons who contact Local 28 or JAC seeking sheet metal work;

(k) Persons who are employed as sheet metal workers or apprentices by Local 28 contractors.

(l) Persons working in sheet metal shops at the time they are organized by Local 28;

(m) Persons who are reinstated to journeyman membership or to the apprentice program.

(n) Non-whites who apply for advanced standing in the apprenticeship program described in Paragraphs 33-35;

(o) Non-whites who are granted advanced standing in the apprenticeship program and the standing granted as described in Paragraphs 33-35;

The records and lists specified in subsection (a) through (o) of this Paragraph shall contain the name, address, race, or national origin, union affiliation, if any, of each individual listed therein, as well as the date of the application, test, inquiry, contact, or employment (and the name of the contractor, where applicable), and the disposition with reasons, of each such application, test, inquiry, contact or employment. Copies of these records and lists shall be submitted to counsel for the parties and the Administrator at least once every three months.

38. Local 28 or JAC, as the case may be shall submit the following data to the Administrator and parties at the time specified.

a) the name and race identity of persons admitted into (i) journeyman status in Local 28 or (ii) apprentice status in the Apprentice Program, within 15 days of such admission;

b) on January 1 and July 1 of each year the total number of (i) journeymen members of Local 28, (ii) pensioner members of Local 28 (as defined in Paragraph 2), and (iii) apprentices. Such reports shall include the percentage of non-whites in each group.

~~39.~~ 40. The JAC shall maintain complete records of all applications and other material concerned with the selection and work records of apprentices. These records shall include but not be limited to an applicant log for each examination showing the name, race, date of birth of each applicant, dates of completion of each step in the application procedure, disposition of each step in the application procedure, and disposition of each application. All such records shall be made available for inspection and copying by the plaintiffs at reasonable intervals during normal working hours or at other mutually convenient times. In addition, records shall be submitted to the Administrator and plaintiffs as follows:

a. Prior to each apprentice entrance test and within 7 days of the closing of the application procedure the JAC shall submit a report including the following information for each person who filed or requested an application for that apprentice examination: name, address, telephone number and race or national origin if known for those who request applications

b. No later than ~~10 days prior to~~ 20 days after indenturing a class of apprentices the JAC shall provide a report of the names and ethnic classification of all persons who were rejected during the application and testing period and the reason therefore and the names of all persons whose application became inactive and the reason therefore.

c. Every six months subsequent to the indenturing of a class of apprentices the JAC shall furnish a report giving the names of all non-white apprentices, ~~their employment and school record~~, the name(s) of contractors to which each was referred and the number of hours worked.

d. The Joint Apprenticeship Committee shall furnish the names of any non-white apprentices who are dropped from the program. Said information shall be furnished within twenty days from the date action is taken by the Joint Apprenticeship Committee. Said report shall contain the reason why the individual was dropped from the program and the steps taken by the Joint Apprenticeship Committee to retain the individual in the program. The report shall also include the training and employment history of the individual while he was in the program.. The Joint Apprenticeship Committee shall furnish the names of all non-white apprentices who leave the program other than by action of the JAC. Such report shall contain the reason the apprentice has left the program ~~[U.S. if~~ known by the JAC~~]. [City as ascertained by an exit interview diligently attempted]~~. Said information shall be furnished within twenty days from the time the JAC is notified that the apprentice has left the program.

~~41.~~ 40. All records and lists required to be compiled by this Program shall be maintained for ten years and shall be made available for inspection and copying by the parties and the Administrator on reasonable notice during regular business hours or at other mutually convenient time without further order of the court.

Advertising and Publicity

~~41.~~ 42. The parties shall use their best efforts to disseminate accurate information to the non-white community of opportunities within Local 28 and the Local 28 apprentice program.

~~42.~~ 43. Prior to each "hands-on" journeyman's test and apprentice entrance test at a time to be selected by the Administrator to insure full coverage and effectiveness, Local 28 (in the case of the"hands-on" journeyman's examinations) ~~and Local 28~~ and JAC (in the case of apprentice entrance tests) shall undertake a program of advertising and publicity, under the overall supervision of the Administrator, designed to inform the non-white community in New York City of the date, location, and nature of such examinations, the qualifications therefor and the opportunities available upon successful completion of the test. These campaigns ~~shall~~ may include print and electronic media, dissemination of material to community, government and minority organizations. The City of New York ~~shall~~ may use its best efforts to provide space and opportunities for such publicity, ~~so as to reduce the cost of such campaigns~~.

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44. By ~~December~~ March 1, 1976 Local 28 and JAC shall provide to the Administrator and the other parties a written plan of an effective general publicity compaign designed to inform the non-white community in New York City of non-discriminatory opportunities in Local 28 and the Local 28 apprentice program as provided in the Order and Judgment and this Program. The other parties shall have 30 days to comment upon the written plan and the Administrator, having considered all submissions, shall revise the plan if he deems necessary and shall order it into effect by ~~February~~ May 1, 1976.

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Work Referral

45. The Administrator shall conduct a study of the present Local 28 work referral system as described in the written statement submitted pursuant to Paragraph 21(g) of the Order and Judgment. This study shall be completed by June 15, 1976 and the Administrator shall submit to the parties such recommendations he deems necessary to assure that non-whites ~~share equally in the available employment.~~ do not bear a disproportionate share of unemployment.

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Resolution of Disputes

46.a) 45. In addition to all powers and duties granted by the Orders of July 18, 1975 and August 28, 1975, and by this Program, the Administrator shall have authority to make final determinations in the event of a dispute relating to the ~~issues of this action~~ operation of this Order and this program, between the parties, between an individual and the union, between an individual and the JAC, and between an individual and a contractor. His authority shall include, but not be limited to the resolution of disputes regarding:

OK 9/27 Substitute first Order (a)

a) Maintenance, availability and production of documents;

b) Frequency of the apprentice of journeyman tests as required to implement this program;

c) The ratio of non-white to white for entry into the union and the apprenticeship program;

d) Amendment of the Program;

e) Work referrals, including but not limited to the failure of the union to refer, the failure of the contractor to accept a referral or a direct application for employment when there are job openings; and the layoff of any worker out of journeyman job seniority for any reason save good cause shown.

agree to judge 9/1, 7 of 15

f) the validity or administration of either the journeyman or apprentice test.

g) eligibility for a journeyman or apprentice test, or refusal of appropriate appointment as a journeyman or apprentice.

h) amount or terms of payment for an initiation fee.

i) back pay claims.

46. The union and JAC shall conspiciously post notices, in language and at locations approved by the Administrator, advising individuals of their rights under this Program. Within 60 days after it is ~~ordered~~ by the Court.

47. Any party, ~~may~~ make a complaint to the Administrator within thirty days after the situation complained of arises. ~~Individuals affected by this Program may make a complaint to the Administrator within ninety days of the occurance of the situation complained of.~~ The Administrator shall give the parties notice of such a complaint within ~~three~~ five days and, where a hearing is in his discretion warranted, expediously schedule such hearing.

GENERAL PROVISIONS

48. Except as modified, changed or amended by the terms of this Program or order of the Administrator, Local 28 and JAC shall not change, modify or amend any aspect of the operation or content of the Apprentice Program, or the conditions or terms upon which an individual shall become a member of the Apprentice Program or Local 28 or entitled to work within the jurisdiction of Local 28.

49. At any time, any of the parties herein may apply to the Administrator and then to the Court for the purpose of seeking additional orders to insure the full and effective implementation of the terms and intent of this Program; ~~to relief from any aspect of this Program~~

Dated: New York, N.Y.

administrator

APPENDIX A

New York State Division of Employment (Department of Labor)

Department of Employment of the City of New York

Bureau of Labor Services of the City of New York

Recruitment and Training Program, Inc.

FightBack

Asian Americans for Equal Employment

Black Economic Survival

Community Corporations and Regional Neighborhood Manpower Centers of New York City

New York City Board of Education (Public High Schools and Evening Trade Division)

Williamsburg Coalition

National Urban League

National Association for the Advancement of Colored People

Puerto Rican Community Development Agency

National Association for Puerto Rican Civil Rights

South Bronx Puerto Rican Coalition

Citywide Coalition of Black, Hispanic, and Asians in Construction

New York City Human Rights Commission

New York Project Equality

Veteran's Administration

New York State Division on Human Rights

Urban Coalition

Commonwealth of Puerto Rico

In Lit

Grass

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LAW DEPARTMENT

TDA:LC
70-1674

1 St. Andrew's ~~xxxxxxx~~ Annex Plaza

October 15, 1975

BY HAND

The Honorable Henry F. Werker
United States District Judge
Southern District of New York
United States Courthouse
Foley Square
New York, New York 10007

Re: EEOC v. Local 28
71 Civ. 2877 (HFW)

Dear Judge Werker:

This letter will respond to the objections submitted by Local Union 28 and the City of New York to the proposed Affirmative Action Program ("AAP"). This office has not received any objections from Mr. Rothberg, co-counsel to JAC and counsel for the Contractors Association.

Local 28 Objections

Objection No. 1. The language objected to in Paragraph 1 is directed toward assuring that non-whites share equitably in opportunities for employment. That was, and is, the purpose of this lawsuit. The language is prospective and neither it nor the AAP as a whole should be limited to the specifics which may or may not be in the "record". The proposed language does not guarantee that all non-whites will be employed for an equal number of hours as whites, but it seeks a goal that opportunities for such employment will be equitably shared. Local 28's proposed language which is applicable only to undefined "current depressed conditions" is too narrow.

Objection No. 2. The establishment of interim goals is authorized by ¶¶ 11 and 14(e) of the Order and Judgment entered in this action on September 2, 1975 ("Order and Judgment"). The interim percentages are well-considered and moderate. Including apprentices, the union now has a non-white percentage of approximately 5%. In the first three years of the Program this percentage is to be increase by 11% and in the last three years by 13%. The largest increases are called for in the first year (from 5% to 10%) and in the sixth and last year (24% to 29%). The larger increase in the first year is based upon the fact that the present manpower level in the apprentice program is extra-ordinarily low and a larger number of non-whites should be entering the union through the journeyman's test and the four years experience requirement (see discussion infra).

The definition of pensioners was left for formulation in the Program (¶ 11, Order & Judgment). We believe the formulation contained in the proposal before Your Honor is a fair compromise reasonably calculated to attain the purpose sought. Initially, it should be noted that this definition affects only the calculation of the interim and final goals. We believe it would be unfair to include all pensioners in the calculation since many might not have been part of an active work force for many years and may no longer even reside in the area. However, as pointed out by the City of New York, these pensioners are voting members of the union and have the power to affect union policies and programs. Furthermore, pensioners can become part of the active work force at will. Therefore, we believe the three year definition which reduces the number of pensioners calculated in the percentage by 70% is fair.

Objection No. 3. The provision making membership in the union available to individuals with experience in the industry is a necessary and viable admission procedure which is authorized by Paragraph 22 of the Order and Judgment.

The criteria set out in Paragraph 22 for implementing the provisions contained therein include:

a) furthering the goal of achieving non-white membership of 29% in Local 28;

b) restoring non-whites to positions which would have been available absent discrimination;

c) other relevant circumstances.

We believe that the parties and the Administrator have fully considered the criteria at the numerous and lengthy conferences held during the development of the AAP. We see the rationale for the inclusion of an experience avenue as being an additional means of entry into the union of qualified non-whites in order to reach the 29% goal. We do not believe that the only way to test qualifications is through a "hands-on" test. In our view, four years of sheet-metal experience, as reviewed by a qualified board of examiners, is a reasonable means of qualification. Furthermore, such experience indicates an exposure to and genuine interest in the trade. It may also mean that such persons have indeed been subject to past discriminatory practices on the part of Local 28, or the JAC.

The proposed three member examining board is a compromise. Originally it was proposed that the board consist of representatives of Local 28, the Contractors, and the Administrator. When the Contractors objected to participating in such a program, a representative of the plaintiffs was substituted. In this regard, we do not think that the subjective evaluation of a sheetmetal project should be left entirely to the discretion of the defendant union. See Opinion, p. 28 and n. 16.

In Objection 3C Local 28 again raises the difference between construction sheetmetal and other sheetmetal. This was effectively disposed of by the Court in its Opinion at pp. 25-26.

In Objection 3D Local 28 confuses the means of developing a "relevant labor force" for the purposes of establishing a goal percentage with an implied residence requirement. Such a requirement limited to New York City would be illogical in the face of the fact that many present Local 28 officers and members live outside the city. We believe the 60-day requirement is ample protection against the feared "influx".

Local 28's Objection 3E seems misdirected. The parties and the Administrator have been careful to assure that avenues of entry to immediate union membership be opened only to qualified persons. The age 26 itself does not seem to be a prerequisite for a qualified sheetmetal worker. Under Local 28's suggestion a person with four year's experience would still have to join the apprentice program.

We accept the proposal contained in Objection 3F.

Objection No. 4. In our letter of October 10, we outlined the objections of the EEOC to Paragraphs 33-36 of the AAP; however, we noted our support for the general concept. The parties and the Administrator gave careful consideration to this concept before its adoption. Essentially, we believe that prior experience in sheetmetal work (though not enough to immediately qualify an individual for journeyman status) is indicative of interest and possible past discrimination and should be accorded appropriate weight. The advanced apprentice concept is founded on a strong belief that the apprentice program is a valuable and legitimate means of assuring entry into the union. We do not propose to bypass it. Rather we seek to measure an applicant's relevant experience and place those who do not require the first term apprentice training in an upper term.

We agree with the Objection 4D.

Objection No. 5. On the whole we think this objection is mooted by the fact that only 36 persons (17 non-white) passed the journeyman's test on October 11, 1975.

Objection No. 6. We do not accept Local 28's unsupported "estimate" of $40-50,000 as the cost of conducting the recent journeyman's test. Whatever the actual cost of that test, we also expect that the arrangements and advertising for a second journeyman's test will be far less involved and expensive. A regular schedule of journeyman's tests has merit and should be authorized. The proposed AAP provides adequate flexibility for timing the journeyman's tests according to needs.

Objection No. 7. Previously discussed. See Local 28 Objection No. 3, supra.

Objection No. 8. We agree that proposed Paragraph 11 omits certain necessary provisions. The last two lines of ¶ 11(a) should read:

> "Opportunity Commission) record of convictions, citizenship or alien status, length of residence, and previous sheet metal experience"

Objection No. 9. There is no persuasive reason behind the argument that the applicants should fully subsidize the cost of the journeyman's test. An application fee in excess of $25.00 would seriously reduce the number of non-whites' applications. See City of New York letter of October 10 and enclosure.

Objection No. 10. See comments on Local 28's Objection No. 3, supra.

Objection No. 11. The paragraph objected to is, very simply, an essential part of an AAP. To say that we do not know the numbers is to state the obvious. To employ that fact as a reason for not developing a Program is to ignore the reason for such a Program. Local 28 would prefer day-to-day negotiations. The EEOC, realizing that amendments are always possible, and often the wisest way to deal with problems in the future, prefers not to negotiate daily but to set some concrete guidelines which can be amended if and when a need to do so has been demonstrated.

Objection No. 12. Objection 12A is based on previous objections already discussed. Objection 12B is accepted.

Objection No. 13. We believe that the optional deferral program is an essential element of the Program because it provides persons eligible for union membership with a reasonable degree of flexibility in timing their entry into the union. Journeyman's tests occur when the parties and the Administrator decide they should occur; that time may not coincide with a person's individual circumstances. Since union membership is not a guarantee of employment, we believe that an eligible applicant should be entitled to arrange his entry into the union with a minimum disruption to his own life. In this regard, it should be noted that Local 28 has not shown that this option will in any way prejudice the union or its members.

The deferral option is not available to those who seek admission on the basis of experience since they may seek admission at any time.

Objection No. 14. Paragraphs 22 and 30 of the AAP establish two essential foundations of the AAP. First, the apprentice program will be the main source for non-white entry into the union. Second, the apprentice program should not be an all-minority program. Assuming a 3-2 non-white to white ratio (we prefer a 1-1 ratio) 780 non-whites

will have entered apprenticeship status by July 1, 1981. This number by itself will be insufficient to reach a 29% non-white goal by 1981 even assuming a union attrition rate of 100 per year. Thus we are relying on journeyman's tests and the experience avenue of entry to reach the required goal. A further reduction in the minimum number of apprentices would increase the necessary reliance on these other avenues of entry. Given the limited number of experienced non-white sheetmetal workers in New York City this reliance would be unwise.

The EEOC submits that the apprentice program which has historically suffered an attrition rate of approximately 25% can handle the number of apprentices required by the AAP. This fact has been confirmed by the employer members of the JAC.

Objection No. 15. The provisions contained in Paragraph 23 are designed to provide adequate flexibility so that apprentices can enjoy the fullest possible employment. If, as we believe, the apprentice program is to be the most important avenue of entry to union membership it should provide the greatest possible opportunities for employment to its members.

Objection No. 16. The substance of Objection 16(a) has been previously discussed. We accept Objection 16(b).

Objection No. 17. See our comments to the City's Objection No. 5.

Objection No. 18. We agree.

Objection No. 19. The position of the EEOC is that the establishment of an appropriate ratio should be done before the scores on the tests are known. This would eliminate any appearance of impropriety in establishing the ratio.

Objection No. 20. The establishment of two lists is essential to identifying and granting an admission preference to non-whites. Such lists, of course, do not alter the scores of the applicants.

Objection No. 21. Local 28's suggested limitation of the recordkeeping requirements to requests or inquiries made in person or in writing is unnecessarily restrictive. To the extent that other types of contacts are made with Local 28 they should be recorded. Obviously Local 28 can only record the information it receives. With regard to Objections 21D and E these requirements cover requests for permits or other general requests and they should be retained.

The three month requirement is generally part of Paragraph 21 of the Order and Judgment.

Objection No. 22. We agree with this objection.

City of New York's Objections

Objection No. 1. See our comments to Local 28's Objection No. 2.

Objection No. 2. We do not oppose this suggestion although we think this definition might be left flexible.

Objection No. 3. The AAP provision was the product of compromise among the parties. While granting the force of the City's argument, we feel that the AAP provision is equitable.

Objection No. 4. We believe that the circumstances should dictate the ratio and there is no need for a floor.

Objection No. 5. The AAP provision in question was the product of compromise. The EEOC suggested

that in order to reduce the fee charged to all applicants the physical examination fee should be paid by those who have scored high enough to be admitted into the program. JAC originally proposed a fee of $27.00 per applicant. Through suggestions like the above we have reduced it to $15.00. We believe the provision is reasonable.

Objection No. 6. Paragraph 36, while unnecessary, is acceptable to the EEOC.

Objection No. 7. We believe the AAP provision is acceptable.

Objection No. 8. In light of the provisions of the Order and Judgment we think the City's objection is unnecessary.

Objection No. 9. This objection and proposal is acceptable.

Very truly yours,

PAUL J. CURRAN
United States Attorney

By:
TAGGART D. ADAMS
Assistant United States Attorney
Telephone No.: (212) 791-0051

cc: David A. Raff
Room 220
49-51 Chambers Street
New York, New York

Sol Bogen
One Penn Plaza
New York, New York

Rosenthal & Goldhaber
44 Court Street
Brooklyn, New York
Att.: William Rothberg

The City of New York

LAW DEPARTMENT
MUNICIPAL BUILDING
NEW YORK, N. Y. 10007

W.BERNARD RICHLAND, CORPORATION COUNSEL

October 15, 1975

Hon. Henry F. Werker
United States District Judge
United States Court House
Foley Square
New York, New York 10007

Re: E.E.O.C. and City of New York
v.
Local 28 71 Civ. 2877 (HFW)

Dear Judge Werker:

In accordance with the schedule established by Mr. Raff, this letter constitutes the City's reply to the objections raised by the United States and Local 28 to the Administrator's proposed Affirmative Action Program:

1. E.E.O.C.'s objections:

a) We agree with the proposal that there be a refund of dues to conditional members who do not become regular members. However, dues refunds should only be required for months in which the conditional member did not work. Moreover, any portion of the initiation fee paid during conditional membership by an individual who is unable to become a regular member should also be refunded, if the individual did not commence work.

Therefore we propose the following language to be added at the end of Paragraph 17:

"If a conditional member is terminated without becoming a regular journeyman member of Local 28 he shall be entitled to a return of any dues paid in advance for any month in which he was not employed and, if he was not employed during his conditional membership, he shall also be entitled to a return of any payment made toward the initiation fee."

b) Paragraphs 33 through 36 as submitted by the Administrator reflect a program worked out between the City and counsel for the employers. The purpose is to avoid the necessity for testing applicants for advanced standing who have more than one year experience as determined by JAC's Training Coordinator. It was agreed between the employers and the City, and E.E.O.C.'s proposal also recognizes, that testing of these individuals is unnecessary. The purpose of sharing non-white apprentice appointments between advanced and entry-level applicants is to avoid the devisiveness and conflict that might arise if there were no fixed system for admitting apprentice applicants who have more than one year experience and who therefore can become journeymen in less than four years. The City is aware of large numbers who may be qualified by experience to be immediately placed with advanced standing, as was done under the 1974 interim orders of Judge Gurfein, including individuals who fail to qualify as full journeymen on the October 11 examination. The placement of such individuals should be specifically provided for in the Program.

It should be noted that Paragraph 35(a) does not contemplate or permit the admission of a lower-ranking non-white over a higher ranked non-white. Indeed, the opposite is provided but possibly requires clarification, which could be accomplished by inserting the words "in accordance with Paragraph 31(b)" after the words "acceptance into the apprenticeship program" on line 5 of Paragraph 35(a).

2. Local 28's objections:

a) Objection #1: Title VII is an equal employment opportunity statute and the effectivenss of the program herein will ultimately be measured by reference to the equitable sharing by non-whites of employment opportunities available to Local 28 members. The union proposal does not express the purposes either of this suit or of the Program ordered by the Court to be established.

b) Objection #2:

A. Paragraphs 11 and 14(e) of the Court's Order and Judgment specifically provide for the establishment of interim goals to assure "regular and substantial" annual progress toward the final goals of 29%.

B. Local 28, which has virtually excluded non-whites, should be required to make a dramatic showing of the reversal of historic patterns in the beginning years of this Program. Non-whites should be in a position to compete for available employment by being admitted to membership in annual

percentages that reflect an equitable opportunity to an equitable share of the work that exists. Lesser percentages than those proposed will unreasonably reduce the potential for minority employment, unfairly continue the preference given white members, and make unlikely the attainment of the long range-goal of this Program.

C. The City's proposal is stated in our proposal of October 10.

c) Objection #3:

A. The provision for admission on the basis of four years' experience is necessary to be included in the Program from the outset to obviate continual amendment. It should be noted that the timing and conditions of admission are left to the Administrator. Since less than 100 minority individuals took the October 11th test, this vehicle for admission must appear in the Program so that it can be readily utilized.

B. The precedent for a tri-partite Examining Board is firmly established (e.g., Rios v. Local 638) and, we believe, is absolutely necessary, based upon the miniscule number of minority individuals in the union. An impartial Board will insure an objective evaluation of an individual's qualifications, and the existence of such a Board will aid to preserve the integrity of the Court's Order and Judgment.

D. It is inconsistent to impose a New York City residency requirement on incoming members where none exists for present members, many of whom, in fact, do not reside in the City.

E. A survey made and reported on by the City in the course of the meetings of the parties reveals that minimum age requirements do not exist in the vast majority of building trades. The ability to perform journeyman's work is the essential criterion. The age "22" takes into account that apprentices may commence the apprenticeship program at age 18 and become journeymen four years later.

d) Objection #4:

A. We note here that Local 28 advocates the deferral of each proposed system of admission until the results are known of the others, thus assuring the non-implementation of any. It is not premature to establish a program of admission to apprenticeship with advanced standing for non-whites, because the pool of qualified minority journeymen is limited. Therefore, the apprenticeship program will provide the major route for participation by non-white individuals, and there is a need to immediately accommodate those who should not be required to spend four more years achieving journeyman status when they already have previous trade experience. Further, since Mayoral

Executive Orders require the employment of minority individuals as "trainees", the implementation of a Program for advanced apprentices may avoid the kind of situation which led to the contempt proceedings in this case in 1974.

B. It is unnecessary to subject to an aptitude test individuals who have established to the satisfaction of the Training Coordinator that they possess more than one year's experience in the trade.

C. Since the total number of apprentices is not "entirely unknown at this time" (see Paragraph 22 of Administrator's proposal), it is possible, practical and desireable to provide for the inclusion of specific proportions of advanced apprentices within the total of non-white apprentices to be admitted.

e) Objection #5: Without getting on the Local 28 merry-go-round as to whether the journeymen's admissions should be deferred until the apprentice results are known, and vice versa, Local 28's comments are no longer valid since it is now known that less than 100 non-white individuals took the October 11th test and those successful is expected to be less.

f) Objection #6: According to preliminary reports, only about sixteen minority individuals who took the October 11th test received a passing grade. This small number of new minority journeymen will have no impact on the membership or employment profile of Local 28 members, particularly since more white individuals passed the test than did minority individuals. There is a clear need for journeyman's tests to be conducted at least once a year in order to maximize the flow of qualified minority journeymen into the union. With adequate lead time, which we did not have for the October 11th test, publicity and other costs could be sharply reduced. Figures estimated by Local 28 are questionable.

g) Objection #8: The application form submitted by Local 28 was adopted for the October 11th test only and should not now be adopted as a standardized form for future tests. It is unduly long and burdensome (i.e., medical information unnecessary because medical certificate is required) and the general information more properly belongs in a separate fact sheet reflecting current circumstances (as is being done by JAC for the December test). Local 28's standard application form was never this detailed in prior years, and new application forms should include only that information determined by the parties or the Administrator to be relevant at the time used.

h) Objection #10: See comment (c) above.
It is important that the minority community perceive the entire testing process as impartial. A union-only Examining Board creates a contrary appearance and, thus, a negative testing environment for non-whites.

i) Objection # 11: As stated in the City's letter of October 10th, a minimum ratio must be established in the Program else the subject will be a matter of debate each year, leading to objections, motions and appeals and consequent delay. Given the results of the October 11th test, in which more whites than minorities were passed, such minimums are clearly essential to assure the admission of a maximum of qualified minorities.

j) Objection #12:

A. The application of paragraphs 16 and 17 of the Administrator's proposal will, in fact, only apply to journeymen admitted with four year's experience and to advanced apprentices after these methods of entry are approved by the Court. Paragraph 22(d) of the Order and Judgment specifically applies paragraphs 16 and 17 of the Program to these two groups of incoming journeymen.

B. We believe such provision is inappropriate for inclusion in an affirmative action program and, in any event, the Executive Board may take this action with or without such provision.

k) Objection #13: It should be made clear at the outset that the Program contemplates the utilization of every available method permitted under the Order and Judgment by which the entry of non-whites to the union can be expedited. It is far better to include all these provisions at the outset than to constantly attempt to amend the Program.

l) Objection #14: After the June, 1976 class graduates, there will be less than 100 apprentices of all races in the apprenticeship program. The number of apprentices to be admitted, i.e., 300 by June, 1976 and 200 per annum thereafter, will restore the apprenticeship program to approximately its traditional size. Local 28's objection erroneously states that deferring the decision as to numbers, until after the results are known, will permit such decision to be knowledgably made. However, the apprentice exam produces a ranked list only and so does not bear on the question of how many should be admitted to the apprentice program.

The thrust of Local 28's argument is that the number of apprentices should be decided by collective bargaining, which is subject to arbitration. Clearly, such a procedure is unacceptable as a Title VII remedy after an adjudication of discrimination. It also creates a monstrosity of overlapping jurisdiction of the arbitrator, the Administrator and the Court. Overwhelming Title VII precedent rejects such a mechanism.

m) Objection # 15:

A. The union's objection ignores the plain language of the Administrator's paragraph 23, which measures the ratio of employed apprentices to the aggregate of employed journeymen and not to site-by-site numbers.

B. Counsel for the employers confirmed at one of the drafting meetings that JAC's policy to place upper termers first and to lay them off last results in the placement of fewer apprentices than is possible if seniority amongst apprentices were not relied on. Since the lower grades are expected to reflect a larger number of minority apprentices than the upper grades, at least for the first years of this Program, it is obligatory to expand opportunities for them to receive the on-the-job training that constitutes the bulk of apprentice training. Rotation of apprentices is another device for expanding work opportunities, in which the employers also concur.

n) Objection # 19: The union correctly points out the inconsistency of procedures relating to the establishment of ratios, but proposes an inappropriate adjustment since the examination itself produces only a ranked list with no pass-fail cutoff. The decision as to ratios should, in all cases, be made prior to the giving of the examination in order to insure that it is made dispassionately to effectuate the Order and Judgment and to facilitate an intelligent recruitment campaign.

o) Objection # 20: It is impossible to grant the Court-ordered preference in favor of non-whites for admission into the apprenticeship program unless a method of racial identification and selection is established. Since the examination will produce a list of ranked candidates, from which a pre-determined number and ratio will be appointed, there is no reason to delay a determination of the selection method to be utilized.

p) Objection # 21:

F and H Objection 21 F is derived from the Order and Judgment paragraph 21(e)(xii), and its deletion would require modification of the Order. Moreover, the information is presently readily available, as each employer is required to furnish the various welfare funds with current data as to individual members employed and the number of hours worked. The union trusties have access to these records and it is not a substantial burden to copy and forward them. Sharing of this existing information is essential to a proper implementation of the

Program. Quarterly reports, (Objection 21 H), as required by the Order, are necessary for most effective monitoring; semi-annual information will not be sufficiently timely.

Respectfully submitted,
W. BERNARD RICHLAND
Corporation Counsel

by:_____
Beverly Gross
Assistant Corporation Counsel

CC: BY HAND

Taggart B. Adams, Esq.
Dominick Tuminaro, Esq.
William Rothberg, Esq.
Sol Bogen, Esq.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, and THE CITY OF NEW YORK,

Plaintiffs,

-against-

LOCAL 638 . . . LOCAL 28 OF THE SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL 28 JOINT APPRENTICESHIP COMMITTEE . . . SHEET METAL AND AIR-CONDITIONING CONTRACTORS' ASSOCIATION OF NEW YORK CITY, INC., etc.,

Defendants.

LOCAL 28,

Third-Party Plaintiff,

-against-

NEW YORK STATE DIVISION OF HUMAN RIGHTS,

Third-Party Defendant.

LOCAL UNION 28 JOINT APPRENTICESHIP COMMITTEE,

Fourth-Party Plaintiff,

-against-

NEW YORK STATE DIVISION OF HUMAN RIGHTS,

Fourth-Party Defendant.

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71 Civ. 2877 (HFW)

OBJECTIONS TO AFFIRMATIVE ACTION PROGRAM PROPOSED BY ADMINISTRATOR

Oral Argument Respectfully Requested

Defendant Local 28 and the three Union Trustees of the JAC object to certain provisions of the Affirmation Action Program, dated October 7, 1975, proposed by the Administrator, David A. Raff, for approval by the Court and respectfully requests that the same be modified or deleted as follows:

1. Section 1*. The introductory paragraph of the

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* All references are to the proposed Program except as otherwise noted.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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Plaintiffs,

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LOCAL 28,

Third-Party Plaintiff,

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Third-Party Defendant.

LOCAL UNION 28 JOINT APPRENTICESHIP COMMITTEE,

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-against-

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71 Civ. 2877 (HFW)

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1. Section 1*. The introductory paragraph of the

* All references are to the proposed Program except as otherwise noted.

proposed Program states, among other things, that

> "The goal of this Program is to assure that . . . non-white members of Local 28 and non-white apprentices of Local 28 share equitably in all employment opportunities afforded to members of Local 28."

It is respectfully submitted that this language is unnecessary and goes beyond the language and pertinent purpose contained in the Court's Decision (Opinion) and Order and Judgment regarding this matter:

> "The administrator named by the court is also requested to develop with the parties a plan aimed at protecting non-whites admitted into union and apprentice membership from bearing a disproportionate burden of the unemployment caused by current depressed conditions in the construction industry." (Emphasis added.) (Opinion, page 41.)

> ". . . (ii) protect non-white journeymen and apprentices from bearing a disproportionate burden of unemployment." (Order and Judgment, Paragraph 21(g), page 15.)

At no time during the course of this action were there ever any allegations, claims or charges of whatsoever kind or nature that non-white members of Local 28 or non-white apprentices of the JAC program did not share, at least, equally in all employment opportunities, nor was there any contrary finding or observation by the Court in its Decision. Consequently, the cited language in Section 1 of the proposed Program appears to be inconsistent with the "record" herein, at least unnecessary, and interjects a concept unrequired for the implementation of the Program.

It is respectfully submitted that this language be deleted from Section 1 and that the following language, in accordance with the Court's Opinion and Order, be substituted therefor:

> and ". . . to assure that non-whites admitted into union and apprentice membership from bearing a disproportionate burden of the unemployment caused by current depressed conditions in the construction industry."

2. A. Section 2 prescribes the following interim goals for the purpose of reaching a goal of non-white membership in Local 28 of 29% by July 1, 1981:

July 1, 1976	10%
July 1, 1977	13%
July 1, 1978	16%
July 1, 1979	20%
July 1, 1980	24%

Wrong see ¶ 11, 14c

The Court's Order did not direct or suggest that interim goals be developed or established. There are no facts, records or otherwise that support the interim goals that are being proposed. At the very best they are sheer speculation, without any factual basis as to whether they are realistic or meaningful in light of the relevant non-white labor force. They appear to be unwarranted guesses which would create artificial criteria that may or may not be met, and that may or may not have any connection with reality.

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It is respectfully submitted that no interim goals should be established for they serve no meaningful yardstick or other purpose, and would tend to create possible misunderstanding and confusion in an already complicated area.

B. If the Court should opt for interim goals, those set forth in the Program should be modified to reflect the Court's "firm belief that a gradual but steady influx of non-whites will produce the most stable membership." (Opinion, Footnote 30, page ix.) Accordingly, the interim quotas should be gradually developed with a substantially lower percentage in the earlier years in view of the severe unemployment in the industry, and a greater percentage in the later years. The 10% quota proposed as a goal for July 1, 1976, would represent an approximate jump in percentage of non-whites in Local 28's membership of about 6%, requiring an influx of about 180 non-whites at a time when unemployment (approximately 33%), including apprentices, is at its highest in the Union's history.

It is submitted that the interim goals for the first two or three years should be at 1-2% above the present percentage of 4%, and that the percentage goals for the later years be correspondingly increased in the hope that there will be a recovery of the depressed conditions in the sheet metal industry.

C. In calculating the membership of Local 28 for

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purposes of determining the 29% quota, the Administrator proposes that "all pensioners who have been employed as sheet metal workers within the last three years" be included with journeymen and apprentices.

The Order and Judgment of the Court left open the definition of "pensioners" to be counted in the total membership of Local 28, for amplification by the parties in the development of the Program. The Administrator simply adopted the definition proposed by the plaintiffs, which is unrealistic and inconsistent with the Court's description regarding relevant labor forces and the concept implicit therein that the 29% quota be related to the working membership of Local 28 and the job opportunities available to that group. Pensioners, who by definition no longer form a part of this viable labor force and who, so long as they maintain this status, cannot engage in sheet metal employment, are, to all intents and purposes, irrelevant to the viable labor force for the purpose for which the Court appears to have established the 29% quota.

Insofar as pensioners may return to the labor force, and consequently lose their status as pensioners, Local 28 proposed that pensioners who worked more than 210 hours, approximately 6 weeks, in any year be included in the computation and that, in any event, those receiving a disability pension (73 as of October 1, 1975) should in no event be included.

If the 29% quota-goal is to reflect the composition of whites and non-whites in a work force competing for available job opportunities, there is simply no basis for including the pensioners in such calculations.

As of October 1, 1975, the pension group consisted of the following:

Total		769
Disability	73	
Employed in past three years	237	
Employed in 1975 or 1974, 210 hours or more	105 (approx.)	

3. A. Sections 3(b) and 15 provide for the admission to journeyman membership in Local 28 on the basis of four (4) years' experience in sheet metal work or reasonably related or similar work, including experience in the Armed Forces or vocational training, to be reviewed by a three (3) member board, comprised of a representative chosen by Local 28, one chosen by the Administrator and the third selected by the plaintiffs and the State Division of Human Rights.

The Court's Judgment in this connection authorizes the establishment of such admissions as an <u>option</u> available to the parties, "considering all relevant circumstances," [Section 22(b), pages 16-17] or the Administrator upon notice to the parties.

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This provision was adopted by the Administrator as originally proposed by the plaintiffs, without presenting or discussing any "relevant circumstances" as to why such admissions would be necessary or desirable in addition to the proposed annual journeyman's examination. Likewise, the Administrator never proffered any facts or circumstances to support the inclusion of this option in the Program at this time.

It is respectfully submitted that even consideration of this option, let alone its adoption at this time, is entirely premature, without foundation as to its necessity or desirability, and inconsistent with the Order and Judgment. With the avenues of the journeyman's examination and the apprentice program laid open and unimpeded by the Court's direction for non-whites, it would appear to be entirely unreasonable at this time to consider other avenues of bringing in non-whites, assuming there were any, without awaiting the results of the journeyman's examination(s) and the revised apprentice admission program.

The desirability, feasibility and necessity for providing admission to journeyman membership in Local 28 on the basis of experience should await a thorough investigation and review as to the functions and operations of the other portions of the Program. It is respectfully submitted that, at this time, it is premature to determine whether or not such admissions should be part of the Program, as an option indicated in the Order and Judgment.

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B. If, as and when the Court determines that admission by experience is appropriate and proper for the Program, it is respectfully submitted that such admissions be administered by the Local 28 Examining Board, subject to review by the Administrator and ultimately the Court, and not by the proposed tri-parte board proposed by the Administrator.

Throughout this proceeding, there has never been an allegation, charge or claim that the Local 28 Examining Board was not qualified, in any respect, for conducting examinations as to the qualifications of applicants for admission as journeymen in Local 28. The Court's Opinion and Order & Judgment do not require, provide for, or remotely suggest that Local 28 be punished and disciplined by depriving the Union of its right to examine the qualifications of applicants for membership by its Examining Board.

The Administrator adopted the plaintiffs' proposal for a tri-parte board without any facts or circumstances to support the rejection of Local 28's Examining Board. Neither the plaintiffs nor the Administrator have stated or offered any basis for eliminating Local 28's Examining Board and resorting to the tri-parte board.

At this stage of the proceedings of the implementation of the Court's Order and Judgment, it is submitted that there is no reason to modify, disrupt and dismantle the Union's mechanism for admission, unless it is

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established that this mechanism cannot function in compliance with the Court's Order. Local 28's Examining Board should not be eliminated except for good and sufficient reasons, of which none were submitted or proposed, in accordance with the Court's Order and Judgment.

C. If the Court should accept the concept of experience admissions at this time or at some later date, it is respectfully submitted that the kind of experience required be defined in terms of "construction sheet metal work" rather than some general and vague reference to related or similar sheet metal work or vocational training. Quality and standards of journeyman sheet metal workers in New York City should not be diluted unnecessarily by reducing the level of requisite general experience to a point below the skills and talent required of a journeyman sheet metal worker.

D. The Administrator proposes that persons residing outside of New York City, to wit: Nassau (N.Y.), Suffolk (N.Y.), Westchester (N.Y.), Bergen (N.J.), Passaic (N.J.), Essex (N.J.), Union (N.J.) or Hudson (N.J.) be eligible for experience admission. This is inconsistent with the Court's Opinion dealing with relevant "labor force in New York City." (Opinion, pages 39-40) The Court's Opinion makes it abundantly clear that the non-whites who are to make up the 29% of Local 28's membership are to be drawn from New York City, and not from other areas which were not

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considered or discussed by the Court regarding the 29% quota.

If the Court should permit any amplification of the New York City area, it is respectfully submitted that the limited 60 day residency requirement proposed by the Administrator be extended to a period of at least one year to avoid the possibility of an influx of non-residents for admission purposes only, without any real contacts or ties to the community.

E. The Administrator further proposes an age requirement of "22 years or over" for experience admissions. This age requirement conflicts with the age requirement for admission to the apprenticeship program, which is 18-25, and up to age 30 for military service.

There have been no proofs or showing of any kind whatsoever that an age requirement of 26 and over for admission to journeyman membership in Local 28 in any way would be discriminatory against non-whites or would interfere with the effectuation of the Court's Order and Judgment; and accordingly, it is respectfully submitted that that age requirement be adopted by the Court.

F. The eligibility requirements set forth in Section 15 have omitted, possibly through an oversight, a requirement that the applicant be a "citizen or lawful,

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permanent, resident alien legally entitled to work in the United States." This requirement was accepted by all parties in connection with the current journeyman examination and further journeyman examinations [see Section 10(b) of proposed Program], and, accordingly, it is respectfully submitted that such a condition be required of all applicants for journeyman admission to Local 28 -- or the apprentice program.

4. A. Sections 4(b) and 33-36 provide for the admission of non-whites in the apprentice program with advanced standing. The Court's Judgment [Section 22(c), page 17] in this area authorizes the establishment of such a program as an <u>option</u> available to the parties ("considering all relevent circumstances") or the Administrator upon notice to the parties.

Similar to the provisions regarding admission to Local 28 on the basis of experience, the Administrator accepted this proposal as originally proposed by the plaintiffs without presenting or discussing any "relevent circumstances" as to why such a program would be necessary or desirable in addition to the proposed annual journeyman's examination. Likewise, the Administrator never proffered any facts or circumstances to justify the inclusion of this <u>option</u> in the program <u>at this time</u>.

It is respectfully submitted that even consideration of this option, let alone its adoption, is entirely

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premature, without foundation as to its necessity at this time.

Neither the plaintiffs nor the Administrator have suggested that there is a need for such advanced apprentices to ultimately meet the 29% quota of non-whites; nor has it been demonstrated or explained in any manner that the JAC's regular apprentice program is, or would be, discriminatory against non-whites, if it were not modified to include "advanced apprentices."

In accordance with the Court's Order and Judgment, the consideration of the concept of advanced apprentices should be deferred until a need therefor is established for the purposes of effectuating the Court's 29% quota.

B. The Administrator's proposal for advanced apprentices would require the apprenticeship aptitude examination only for those applicants with less than one year's experience in sheet metal work; applicants with more than one year's experience would not be required to take an examination.

If the concept of advanced apprentices is to be adopted at any time, all such applicants should be required to take the regular apprentice aptitude examinations, unless and until it is found that the mere taking of the examinations in some way is discriminatory against non-whites. There has

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been no showing that the requirement of these examinations would, in any way, "chill" eligible applicants who might otherwise come forward for the advanced apprentice standing.

It is respectfully submitted that a validated apprentice aptitude test would in nowise undermine an advanced apprentice program, if, as and when the same should be adopted.

C. The Administrator further proposes that the number of non-white advanced apprentices be amalgamated with the number and ratio of non-whites admitted in the regular apprentice program. Since all of these numbers are entirely unknown at this time, it is respectfully submitted that consideration of the numbers of advanced apprentices, if, as and when such a program should be adopted, and the concept of the ratios of the non-white apprentices to the white apprentices be deferred until such time that the number of such applicants is ascertained. There is no need at this time to adopt a numbers and ratios procedure until the number of potential advanced apprentices is ascertained.

D. The eligibility requirements for advanced apprentices contained in Section 31 omit any reference to citizenship or permanent alien status--possibly through an oversight. It is respectfully submitted that for the reasons stated in paragraph 3.F. hereinabove, if, as and when advanced apprentices are considered for the apprenticeship program, that such an applicant be "a citizen of the United States or

a lawful, permanent resident alien legally entitled to work in the United States."

5. Section 7 sets forth a general schedule of admission to Local 28 journeyman membership of those persons, non-whites and whites, who pass the journeyman examination scheduled for October 11, 1975. In general, it is proposed that all non-white applicants, up to a total of 200, be admitted by December 1, 1975, that white applicants who pass be admitted on a basis of the rank attained in the examination in a ratio to non-whites to be determined by the parties or by the Administrator and that whites and non-whites who are not admitted by December 1, 1975, be admitted some time in the future, as may be determined by the Administrator.

Since the number of successful applicants is not known at this time and, perforce, the race, color and national origin are likewise unknown at this time, it is respectfully submitted that a determination as to the number of successful applicants to be admitted to Local 28 should be deferred until after the examination and that artificial numbers and ratios not be postulated at this time.

In light of the severe unemployment in the industry, which the plaintiffs and the Administrator concede (that has risen to approximately 33% of the membership, 1000 out of approximately 3000 members), it is respectfully submitted that the number of successful applicants to be admitted be deferred until some determination is made as to the job

opportunities presently available for such new members. The number of non-whites to be admitted, who successfully complete the journeyman's examination, should be dovetailed with the number of non-whites who are to be considered for admission in the apprentice program after the apprentice examination now scheduled for December 13, 1975.

Applications for the journeyman examination were closed on October 3, 1975, and for the Court's guidance, the following is a breakdown of the ethnicity of the applicants:

Blacks	79
Spanish Surnames	38
Whites	44
TOTAL	161

6. Section 8 requires that Local 28 conduct the next journeyman's examination in the "Spring of 1976 and at least once a year thereafter."

Although the final costs of administering the current journeyman's examination, including publicity, have not been computed, it is anticipated that they will total approximately $40-50,000. Under the circumstances, with the known number and composition of the applicants, it is respectfully submitted that no additional journeyman examinations be scheduled and that the matter be left subject to the review by the Administrator and the parties as to need and desirability therefor--but in no event should another journeyman examination

be required for at least two years.

To the extent that such an arrangement is inconsistent with the Order of the Court, it is respectfully requested that said Order be modified accordingly.

7. Section 10 sets forth the eligibility requirements for applicants to take the journeyman examination specified in the Program. In general, they are comparable to the qualifications prescribed for applicants for admission on the basis of experience, i.e., 22 years of age, residency in New York City or the counties of Nassau (N.Y.), Suffolk (N.Y.), Westchester (N.Y.), Bergen (N.J.), Passaic (N.J.), Essex (N.J.), Union (N.J.) or Hudson (N.J.), and sheet metal experience (which in this instance is one year).

These eligibility requirements are inadequate, unacceptable and objectionable for the same reasons set forth in detail hereinabove in paragraph 3.

It is respectfully submitted that these qualifications be modified and amended in the same manner and to the same extent as those analyzed in paragraph 3.

8. Section 11 requires a standardized application form for the journeyman examination and sets forth the details to be included therein. The proposed application form is objectionable to the extent that it omits certain essential information (e.g., citizenship, residency, record

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of convictions) necessary to evaluate the eligibility of the applicant.

Annexed hereto as Exhibit "A" is a true and complete copy of the application form approved by all the parties and the Administrator for the current journeyman examination. It is respectfully submitted that this form (except for appropriate updating modifications of the "Information" contained on the reverse side) be adopted as the standardized application for future journeyman examinations.

9. Section 12, among other things, fixes a maximum fee of $25.00 for future journeyman examinations. The fee for the current journeyman examination was $25.00, and the actual cost thereof is substantially far in excess thereof. The cost of conducting future journeyman examinations is anticipated, realistically,to be greater. Consequently, it is respectfully submitted that no maximum fee be set at this time and that the matter be left for discussion between the parties and the Administrator prior to the scheduling of future examinations. There is no need presently to place an artificial ceiling on a cost item that realistically will continue to increase.

10. A. Section 13 provides for the grading of future journeyman examinations by a Board of Examiners consisting of three members, one each selected by Local 28, the Administrator and the plaintiffs with the State Division of Human Rights. It is respectfully submitted that there is no basis whatsoever

for displacing Local 28's Examining Board by the tri-parte board proposed in Section 13 whereby (i) Local 28's representation would be in the minority and (ii) the Administrator, who would be the reviewing authority of the Board's action, would also be represented on the Board.

Throughout this proceeding, there has never been an allegation, charge or claim that the Local 28 Examining Board was not qualified, in any respect, for conducting examinations as to the qualifications of applicants for admission as journeymen in Local 28. The Court's Opinion and Order & Judgment do not require, provide for or remotely suggest that Local 28 be punished and disciplined by depriving the Union of its right to examine the qualifications of applicants for membership by its Examining Board.

The Administrator adopted the plaintiffs' proposal for a tri-parte board without any facts or circumstances to support the rejection of Local 28's Examining Board. Neither the plaintiffs nor the Administrator have stated or offered any basis for eliminating Local 28's Examining Board and resorting to the tri-parte board.

At this stage of the proceedings of the implementation of the Court's Order & Judgment, it is submitted that there is no reason to modify, disrupt and dismantle the Union's mechanism for admission, unless it is established that this mechanism cannot function in compliance with the

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Court's Order. Local 28's Examining Board should not be eliminated except for good and sufficient reasons, of which none were submitted or proposed, in accordance with the Court's Order & Judgment.

The actions and activities of Local 28's Examining Board will be available for review and scrutiny by the plaintiffs, the Administrator and the Court upon completion of the current journeyman's examination on October 11, 1975. Consideration of the conduct of Local 28's Board in respect to this examination, it is respectfully submitted, should be most relevant to the Court's consideration of this matter.

B. The reference in Section 13 to the advanced apprenticeship program for non-whites should be deleted until such time as "advanced apprentices" are approved by the Court.

11. Section 14 sets forth a schedule of admissions to journeyman membership in Local 28 of those applicants, non-whites and whites, who pass future journeyman examinations, together with a ratio of non-whites to whites to be admitted.

Since, at this time, it is impossible to have any knowledge as to (i) the total number of applicants who might pass future journeyman examinations, (ii) the race, color or national origin of such successful applicants and (iii) the future conditions and manpower needs of the sheet metal industry, it is respectfully submitted that it is unreasonable

and unrealistic to provide for artificial numbers and ratios, even in the most general terms. These matters should best be deferred until there is sufficient specific information as to the aforementioned relevant facts. To include numbers and ratios in the Program at this time simply would create misunderstanding and confusion in an already complex area. No party or person could possibly be prejudiced or injured by a deferral of these decisions until made in a realistic setting.

12 A. Sections 16 and 17 provide for certain accommodations or relief in connection with the initiation fee for admission to journeyman membership in Local 28 to be paid by non-whites who are admitted either as the result of passing the journeyman test, experience admission or advanced apprentices.

These provisions are objected to on the grounds that they apply to admissions on the basis of experience (Section 15) or as a consequence of advanced apprentice standing (Sections 33-36), two methods of admission to which objections have hereinabove been stated. The provisions of Sections 16 and 17 should not be extended to these kinds of admissions until the same are appropriately incorporated in the Program.

B. There is omitted--possibly inadvertently--from Section 16 the following provision, which was agreed upon by Counsel and the Administrator during our discussions:

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"Nothing in this program shall preclude the Executive Board of Local 28 from accepting and acting upon such applications from white applicants." It is respectfully submitted that this language covering both Section 16(a) and 16(b) be reinstated.

13. Section 19 authorizes a non-white applicant who has successfully completed the journeyman examination to defer his admission in Local 28's membership up to six (6) months, and thereafter for an additional period of twelve (12) months upon application to the Administrator This concept of deferral represents an optional procedure under paragraph 22(e), page 18, of the Court's Order & Judgment.

As an optional remedy, it is respectfully submitted that this deferral procedure should not be presently included in the Prog am and made operative at this time. Whether or not deferrals should or should not be permitted for non-whites--or whites--could best be decided after "considering all relevant circumstances" (Order & Judgment, paragraph 22, page 16), including the total number of non-whites and whites eligible for admission, the conditions of employment in the industry and the status of the 29% quota.

There has been no showing or suggestion that th lack of deferral of admissions is, or would be, in any way discriminatory against non-whites or would, in any manner, impede the achievement of the 29% quota. It represents an

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unknown factor and should not be implemented simply for the sake of change in Local 28's admission procedures.

14. Section 22 prescribes the number of apprentices to be indentured in the apprentice program in 1976 and thereafter as follows: 300 by July 1, 1976, of which no less than 100 are to be indentured by February 2, 1976; and 200 apprentices each year after, up to and including 1981.

The establishment of these numbers of apprentices is unreasonable, improper and contrary to the Court's Opinion:

A. The issue of manpower requirements was found by the Court to be "a mandatory subject of collective bargaining by and between the Association and Local 28" (Opinion, page 8). Accordingly, at least in the first instance, the number of apprentices should have been the subject of negotiations between Local 28 and the Contractors' Association, pursuant to the provisions of their collective bargaining agreement, including arbitration.

The Contractors' Association and the Employer Trustees of JAC obviously have a different and distinct interest from that of Local 28 in respect to the need for apprentices in the industry--a matter which should be resolved in negotiations, and possibly arbitration, rather than by fiat in this proceeding.

In addition, such negotiations between the

"parties" would have afforded the opportunity for the resolution and disposition, or at least the identification, of subsidiary problems involving the placement and employment of new apprentices, the current unemployment of 91 present apprentices, including non-whites, the interrelationship of the employment and unemployment of journeymen and the total number of apprentices, new and old, who could be successfully trained and employed under all these circumstances.

Entirely unrelated to the question of admission of non-whites into the apprentice program are the real and difficult questions of employment and unemployment of current apprentices and the impact on the employment of journeymen by the influx of 300 apprentices within a 6-month period.

The fact that there were approximately 590 apprentices in the program in 1972, which represented one of the highest points of full employment in the sheet metal industry, is entirely irrelevant to the appropriate number of apprentices that should be in the program <u>at this time</u> (or in the near future), when the industry is suffering the severest unemployment in its history. The needs of the industry as determined by the Contractors' Association and Local 28 under their contract, the impact of new apprentices upon the employment opportunities of current apprentices and the impact of the employment of all apprentices upon the employment opportunities of journeymen are, it is respectfully submitted, compelling factors in considering the appropriate

number of apprentices that could possibly be indentured at this time or in the future.

The Administrator, for the most part, simply adopted the proposal by the plaintiffs in regard to the number of apprentices to be indentured with the acquiescence of counsel for the Contractors' Association and the three employer trustees on JAC. It is respectfully submitted, as proposed on behalf of Local 28 during these discussions, that the number of apprentices to be indentured in February and July 1976 not be fixed at this time, but be considered after the results of the apprentice examination. At that time, the number of successful non-white applicants would be known. That factor and the determination by the Contractors' Association and Local 28, either by agreement or arbitration, as to the appropriate total number of apprentices would provide the bases for realistic determination as to the number of apprentices that should be indentured.

ranking only

The projection of 200 apprentices to be indentured in each year after 1976, to and including 1981, likewise, is unwarranted and unsupportable. This number, again proposed by the plaintiffs and acquiesced in by the counsel for the Contractors' Association, represents sheer speculation as to the needs of the industry, the availability of job opportunities and appropriate training for apprentices. Under this formula, there would be an apprentice population of 800 within approximately 2-1/2--3 years. The present facilities of the JAC school and the current depressed employment conditions in the industry simply could not

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support such an apprentice population--particularly in light of the fact that 91 present apprentices are and, for at least several months, have been unemployed. The impact of the admission of 300 apprentices within the next six months and 200 annually thereafter would lead to chaos in the industry and substantially greater unemployment for journeymen, whom necessarily would be displaced, if the employers are required to employ this number of apprentices.

In sum, it is respectfully submitted that the Court should not accept, adopt or approve an artificial number for apprentices which has no basis in reality and merely represents a convenient compromise figure between the plaintiffs, acceptable to the Contractors' Association for their own purposes, without regard to the consequences to be inflicted on the current apprentices and the journeyman members of Local 28.

15. A. Section 23 provides, among other things, for the assignment of apprentices based upon a ratio of not less than one apprentice for every four journeymen working. This ratio, which the plaintiffs proposed and the Administrator adopted, is entirely unnecessary and practically unworkable. It appears that the ratio was presented by the plaintiffs to make plausible a large number of new apprentices.

The ratio concept has been considered by JAC, the Contractors' Association and Local 28 on a flexible situation-by-situation basis and has ranged from 1:4 to 1:7.

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The ratio was not employed to determine numbers of apprentices, but rather as a minimum in a given shop or site to confirm proper training and safety for apprentices. The ratio was considered in the light of the fact that at any given time there must be at least a minimun of four working journeymen before the assignment of an apprentice. In some shops and on certain sites, with great variation, the ratio varied up to 1:7 or 1:8. In some shops and jobsites there may be a greater number of journeymen working without any apprentices by reason of the nature of the work or safety conditions. Likewise, there are many other shops and jobsites at which one, two or three journeymen are employed and for which no adequate training of an apprentice can be accomplished. The proposed 1:4 ratio, or any ratio whatsoever, is entirely inapplicable and misplaced in regard to the numbers of journeymen employed in such smaller shops and jobsites.

The proposed 1:4 ratio represents a complete departure from reality, is unjustified by the relevant factors and circumstances as to training and employment, and appears to be a technique for bolstering the number of new apprentices to be added to the Program. This use of the ratio concept is a distortion of its historical and traditional place in the industry.

B. Section 23 further provides for the elimination of "Seniority" as a criterion for apprentice employment and proposes a rotation of apprentices "where necessary and

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feasible." It is respectfully submitted that the concept of seniority as utilized by JAC presently should not be overturned, and a rotation system adopted without a substantial showing that the same is necessary to either (i) dispel discrimination against non-whites or (ii) to assure that non-white apprentices do not share disproportionately in the current unemployment, as expressed by the Court in its Opinion. Neither the plaintiffs, who originally proposed these systems or the Administrator, who adopted same for his Program, have justified or explained their imposition on the JAC program at this time.

In regard to seniority, it has been JAC's policy that the upper term apprentices be placed to work at available jobs prior to lower term apprentices, and that the layoff of apprentices be in reverse order. This practice has proven fair, equitable and even-handed for all apprentices and has not been discriminatory against non-whites in any manner whatsoever. There is simply no showing of a need to do away with this procedure.

The rotation of apprentices should not be included in the Program at this time as either a guide or directive for the JAC. The matter of assignment of apprentices and their appropriate training is the responsibility of the JAC and until such time as it is established or demonstrated that the JAC has not fulfilled that obligation or has acted in a discriminatory manner against non-whites in regard to

assignment for employment or training, its authority should not be curtailed or restricted, directly or indirectly, by the provisions of this Program.

The suggestion of a rotation system is premature at this time and can only lead to unnecessary conflict among the apprentices themselves, the employers, the Union and JAC. If this kind of direction should become necessary, the matter could be presented at that time to the Administrator for consideration and disposition.

16. Section 25 sets forth the qualifications for applicants for the apprenticeship program and is objectionable on two limited grounds: (a) There is included a reference to the "advanced apprentice" status for non-whites up to the age of 35, which should be deleted until such time as the advanced apprentice program is adopted and approved by the Court; and (b) there is omitted from the qualifications any reference to citizenship or permanent resident alien status, which should be expressly included as an eligibility requirement comparable to the requirement for journeyman membership. This may have been an inadvertent omission, since Section 26 dealing with the standardized application form provides for this information. [See Section 26(i).]

17. Section 27 provides, among other things, for a filing fee of no more than $15 for the apprentice application. The actual cost of administering the apprentice aptitude

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test currently exceeds $15. Consequently, there should be no fixed maximum for the filing fee.

18. Section 28 refers to an apprentice aptitude test to be given on December 11, 1975. Actually the agreed upon date is Saturday, December 13, 1975.

19. Section 30 provides, among other things, that the ratio of non-whites to whites to be indentured as apprentices insofar as the December 13, 1975 examination is concerned shall be agreed upon by the parties by November 10, 1975, and if no agreement by the parties, then established by the Administrator by November 15, 1975. In regard to subsequent examinations, the determination of the ratio is to be established by the parties within 30 days after the test results are known or by the Administrator within 15 days thereafter, if the parties fail to agree.

It is respectfully submitted that there is no basis for distinguishing between the first examination in the Program and subsequent examinations as the time for establishing the ratios. Since the parties would have the relevant information concerning the composition of the successful applicants only after the examination is given, it is submitted that the consideration and ultimate determination of the ratio of non-whites to whites slated to be indentured in February and July 1976 take place after the results of the December 13, 1975 aptitude test are available.

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20. Section 31 provides for the selection of successful applicants for admission to the apprentice program on the basis of two separate lists: one for whites and one for non-whites. It is respectfully submitted that successful applicants should not be segregated on two separate lists on the basis of race, color or national origin. Until the completion of the examinations, there is no need to determine the means or method of selecting whites and non-whites for the apprentice program. The number of successful applicants and their composition are relevant factors in determining the method to use for selecting candidates. Consequently, the Program need not and should not provide such a method at this time.

21. Section 37, in implementation of the Court's Order & Judgment, provides for extensive record keeping by Local 28 and JAC.

There is no general objection to these requirements, but it is respectfully requested that certain items be modified for the reasons hereinafter stated. To the extent that the inclusion of these matters emanates from the Order & Judgment of the Court, it is respectfully requested that the Order & Judgment be correspondingly modified.

A. Subsection (a) requires records of persons who request an application for or apply to take the journeyman examination. To avoid any confusion, misunderstanding or

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additional unnecessary costs, it is requested that such records be maintained only for requests that are made in person or in writing--eliminating telephone calls.

B. Subsections (d) and (e) concern applications for admission on the basis of experience, and should be deleted until such time as such admissions are approved as part of the Pprogram.

C. Subsection (g) concerns inquiries of Local 28 about the possibility of transferring into Local 28. Only inquiries in person or in writing be required to be recorded.

D. Subsection (h) covers inquiries of Local 28 as to the "availability of work opportunities with or through Local 28." It is requested that this item be deleted in its entirety because of the vagueness of the subject matter of such inquiries. Alternatively, only inquiries in person or in writing should be required to be recorded.

E. Subsection (j) concerns "persons who contact Local 28 or JAC seeking sheet metal work." It is requested that this item be deleted in its entirety because of the general vagueness and uncertainty as to the subject matter and, in any event, modified to cover only contacts in person or in writing.

F. Subsection (k) would require, insofar as it relates to Local 28, record keeping of the places of employment

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of all members. It is requested that this item be deleted, since the Union does not and could not maintain records of its members' places of employment on account of the rapid and substantial turnover of jobs throughout the industry. Concededly, Local 28 does not have a hiring hall or referral system. Adequate or meaningful record keeping of membership employment simply could not be maintained.

G. Subsections (n) and (o) concern records relating to advanced apprenticeship standing and should be deleted until such time as advanced apprentices are approved as part of the Pprogram.

H. Section 37 would require that the records and lists maintained by the Union be submitted to Counsel for the parties and the Administrator at "least once every three months." It is respectfully submitted that such a quarterly submission is unnecessary and would be unduly costly and time consuming. It is respectfully requested that such a submission be limited to once every six months.

22. Section 48 provides for applications to be made to the Administrator, and thereafter to the Court, for the purpose of seeking further orders for implementation of the Program. It is respectfully requested that the parties be permitted to make applications to the Administrator, and then to the Court, if necessary, for relief from any aspect of the Program, and that the availability of such procedure be

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expressly set forth in Section 48. It was the understanding of the undersigned that the plaintiffs and the Administrator had agreed to such a provision.

Dated: New York, N. Y.
October 10, 1975.

Respectfully submitted,

SOL BOGEN
Attorney for Local 28 and
Union Trustees of JAC

The City of New York

LAW DEPARTMENT
MUNICIPAL BUILDING
NEW YORK, N. Y. 10007

W. BERNARD RICHLAND,
Corporation Counsel

November 3, 1975

David Raff, Esq.
49-51 Chambers Street
New York, N. Y. 10007

Dear Mr. Raff:

This letter is submitted in accordance with your invitation to the parties to suggest language for redrafting of the Affirmative Action Program, pursuant to Judge Werker's Order of October 28.

There is an apparent inconsistency between paragraphs 4 and 13 of the Order, dealing with advanced placement apprentices. Paragraph 4 seems to define the process for selecting such apprentices as one dependent upon their achieving a high enough ranking to entitle them to selection within the numbers and ratios as established. (We assume the use of the word "pass" in reference to the apprentice test was inadvertent.) Such a process could result in no advanced apprentices being indentured, a result clearly contrary to the Court's intention as stated in paragraphs 2 and 3 and made applicable to paragraph 4. (We assume that the Court's reference to paragraph 1 was inadvertent and that reference to paragraph 3 was intended instead). Moreover, a process based on ranking alone seems to conflict with the direction found in paragraph 13 that the Administrator determine the number of advanced apprentices to be admitted.

We believe paragraphs 4 and 13 may be reconciled by the use of a selection system based on three ranked lists-(a) whites, (b) non-whites between the ages of 25 and 35 who apply for advanced standing, and (c) all other non-whites including those under age 25 who apply for advanced standing. The sub-class identified in (b) is that group for which the usual age maximum has been extended under the Program as approved by the Court, because they were excluded by discriminatory tests used heretofore. This group is expected to score less well on paper and pencil test than younger men

more recently in school. However, recognition should be accorded to the demonstrated ability of these individuals to perform successfully on the job.

The City therefore suggests that after the ratio is established as between whites and non-whites, the Administrator establish a ratio as between non-white first termers and advanced apprentices. The whites would be selected from list (a) and the non-whites from lists (b) and (c). Those on list (c) who qualify for advanced standing would be admitted as advanced apprentices, together with such number of advanced apprentices from list (b) that the combined total would equal the number fixed by the Administrator for advanced apprentices.

To accomplish the above, paragraph 33 of the Program should be changed to delete subdivisions (a) and (b), to insert reference to the 6 month experience requirement in the second sentence of the paragraph, and to make subdivision (c) an unnumbered final sentence to the paragraph. Paragraph 35 (a) should be changed to read as follows:

> "Apprentices shall be selected for advanced standing in the following manner: non-whites shall be ranked, in the order of scores achieved on the apprentice entrance exam, on two separate lists, consisting of (i) those between the ages of 25 and 35 who have applied for advanced standing and (ii) all other non-white apprentice applicants. Those on the list referred to in (ii) above whose ranking qualifies them for acceptance into the apprenticeship program in accordance with paragraph 31 (b) shall be admitted and any such apprentice who has applied for advanced standing and who meets the requirements of paragraph 33 shall be placed in the apprenticeship program with advanced standing. Those on the list referred to in (i) above whose ranking qualifies them for acceptance into the apprenticeship program in accordance with paragraph 31(b) shall be admitted with advanced standing in such numbers that together with those admitted with advanced standing from the list referred to

in (ii) above will equal the number of advanced apprentices to be admitted as determined by the Administrator"

We believe this approach permits the coexistence of paragraphs 4 and 13 and implements both of them consistent with the Court's intent. If, however, the above proposal is not acceptable, the City suggests the following alternative: (a) that paragraph 35 (a) be changed to delete everything after "with advanced standing" on line 6 and to substitute for the deleted language "in such numbers as are determined by the Administrator"; and (b) that paragraph 35 (b) be amended to insert the word "not" after "shall" on line 2.

Respectfully submitted

Beverly Gross

Beverly Gross
Assistant Corporation Counsel

cc: Taggart Adams, Esq.
Dominick Tummaro, Esq.
William Rothberg, Esq.
So. Bogan, Esq.

The City of New York

LAW DEPARTMENT
MUNICIPAL BUILDING
NEW YORK, N. Y. 10007

W. BERNARD RICHLAND, CORPORATION COUNSEL

October 9, 1975

David Raff, Esq.
49-51 Chambers Street
Suite 220
New York, New York 10007

Dear Mr. Raff:

In view of the imminence of the Court ordered journeyman's test, I wish to bring to your attention some matters which I believe reflect that Local 28 needs strong encouragement to comply with the intent, as well as the letter of the Order and Judgment of Judge Werker.

On October 3rd, the closing date for filing applications for Saturday's examination, two supervisors for the Recruitment and Training Program Inc. (R.T.P.) met with Mr. Harry Rueckert at the union's office by prior arrangement. While the three men were going over the group of applications for non-white individuals recruited by R.T.P., they were joined by Edward Stack, Local 28's president. Mr. Angelo Gonzales, one of the R.T.P. representatives, tendered an R.T.P. corporate check in the amount of $400 to cover the filing fee for 16 of the individuals. Mr. Stack advised him that the check would not be accepted because it was not certified, and R.T.P. was required to produce a certified check.

When it was agreed among counsel that Local 28 could limit the manner of payment to certified check or money orders, it was my understanding that the union wished to avoid difficulties that might arise from the use of personal checks. I doubt whether the possible tender of corporate checks occurred to anyone present at that meeting. Mr. Stack's decision to construe this condition to exclude R.T.P's corporate check was unduly restrictive and, in my opinion, indicates a strong negative intent in the discharge of the union's obligations.

While Mr. Gonzales and his colleague, James Champion, were in Mr. Rueckert's office, an unidentified white male entered from the next office and told Mr. Stack that he had a phone call asking whether "one of our guys" could come down to file an application even though it was after the 12 o'clock deadline. Mr. Stack left Mr. Rueckert's office with this individual. Later, while Messrs. Gonzales and Champion waited in the reception area for the certified check to arrive from their office, they heard the receptionist advise a black applicant that he must sign a statement indicating his application was filed after 12 o'clock. This incident is mentioned only to illustrate that any

accomodation made to non-whites as to late filings was not necessarily due to an attitude of affirmative cooperation by Local 28.

While waiting in the reception area, Mr. Gonzales spoke with a would-be applicant whose first language was Spanish, and Mr. Gonzales, who also speaks Spanish, was able to ascertain his difficulty and to assist him.

The individual had responded to the Spanish-language advertising. Said advertising used the word "hojalatero" which is an archaic word importing the meaning "tinsmith", and was understood by many Spanish-speaking persons as referring to body fender work. This individual was applying for what he thought was a body fender examination. R.T.P. had received many calls and visits from Spanish-speaking individuals similarly confused by the poor translation of the words "sheet metal worker". Local 28 did not provide nor did it ask the City to provide, Spanish-speaking personnel to aid applicants who responded to its Spanish-language advertising.

During the week of September 22 I made two phone calls to Local 28's offices after 6:00 P.M. and one such call during the week of October 7. A recorded announcement advised me of upcoming union meetings and other current, updated union news. It did not mention the test. Nor did Local 28 mention that it maintains this information service during discussions of the publicity campaign for the test.

We were of the impression that the union intended to send travel maps to applicants along with the notification of where to appear for the test. Yet none of the letters received by R.T.P. applicants contain such maps. Since all the testing sites are located in travel-complicated parts of Queens, this omission by Local 28 creates an unnecessary and costly burden which could have been easily and cheaply avoided.

These incidents illustrate the necessity for anticipating and guarding against any actions or omissions, intentional or unintentional, which might undermine fair administration of the test and further implementation of the Order.

Respectfully submitted,
W. BERNARD RICHLAND
CORPORATION COUNSEL

by: Beverly Gross
Beverly Gross
Assistant Corporation Counsel

CC: Taggart D. Adams, Esq.
Dominick Tuminaro, Esq.
William Rothberg, Esq.
Sol Bogen, Esq.

The City of New York

LAW DEPARTMENT
MUNICIPAL BUILDING
NEW YORK, N. Y. 10007

W. BERNARD RICHLAND, CORPORATION COUNSEL

November 14, 1975

Mr. David Raff, Esq.
Administrator
49-51 Chambers Street
Suite 220
New York, New York 10007

Dear Mr. Raff:

I would like to bring to your attention several matters which I believe require early resolution.

1. The Memorandum and Order of October 23, 1975 specifically approved paragraphs 5, 6 and 7 of the Affirmative Action Program (Program) submitted by you to the Court on October 7, 1975. Only seventeen (17) non-white applicants passed the test called for in paragraph 5 and all of them are required by paragraph 7 (a) to be admitted as journeymen members of the union by December 1, 1975. My best recollection is that all counsel agreed that the nineteen (19) successful white applicants also be admitted, thus meeting the requirements of paragraph 7 (b) (i). At this writing, I have received no copy of a response to your October 22 letter to Mr. Bogen concerning this matter, which must be resolved in less than two weeks absent a prior modification of the Memorandum and Order.

2. Paragraph 13 was also approved by the October 23 Memorandum and Order. This requires, inter alia, that those who fail the journeyman's exam be notified of their possible eligibility for advanced standing in the apprenticeship program. The Memorandum and Order approved the concept of advanced placement. However , the form letter dated October 30, 1975, supplied by Mr. Bogen does not contain the required notification.

3. The Memorandum and Order approved paragraph 23 of the program which contains, inter alia,provisions requiring work sharing among apprentices. To the best of my knowledge, these provisions are not being implemented and there are no existing plans for implementing them. We are willing to work immediately with the JAC in developing and instituting a practical and equitable program for sharing apprentice employment opportunities among all apprentices.

4. Mr. Bogen's letter to you of November 10, 1975 indicates the appointment of Mr. Avent as a union trustee to JAC. There is no indication, however, whether he replaced Mr. Bretz, Mr. Pennington or Mr. Schwartz. This should be clarified for the record.

Very truly yours,

S/Beverly Gross

Beverly Gross
Assistant Corporation Counsel

CC: Taggart Adams, Esq.
Sol Bogen, Esq.
William Rothberg, Esq.
Dominick Tuminaro, Esq.

DAVID RAFF
ATTORNEY AT LAW
SUITE 220
49-51 CHAMBERS STREET
NEW YORK, NEW YORK 10007

TELEPHONE {566-4874
566-4875

November 26, 1975

Sol Bogen, Esq.
One Penn Plaza
New York, New York 10001

Dear Mr. Bogen:

Pursuant to the discussion of counsel to the parties, this date, regarding the effective date of the implementation of paragraph 23 of the Program, I am requesting that the JAC advise me, and all other counsel, of the work history and minority status of every currently enrolled apprentice.

These records are necessary in order to determine whether or not the current employment practices, as they affect apprentices, have a detrimental impact upon the non whites.

Please provide these records to all counsel no later than December 10.

Yours truly,

David Raff, Esq.

cc: William Rothberg, Esq.
Taggart D. Adams, Esq.
Beverly Gross, Esq.
Dominick Tuminaro, Esq.

001580

SOL BOGEN
ATTORNEY AT LAW

PENNSYLVANIA 6-7570
(AREA CODE 212)

ONE PENN PLAZA, NEW YORK, N. Y. 10001

By Hand

November 25, 1975

David A. Raff, Esq.
49-51 Chambers Street - Room 220
New York, N. Y. 10007

Re: EEOC and City of New York
vs.
Local 638 . . . Local 28, etc., et al
71 Civ. 2877 (HFW)

Dear Mr. Raff:

This is an application on behalf of Local 28 to you as Administrator to defer the admission into Local 28 of those applicants who passed the Journeyman's Examination of October 11, 1975, and who are otherwise eligible (experience confirmed, etc.) on the grounds of the severe and unprecedented unemployment that has seized the sheet metal industry in New York City and that is anticipated for the foreseeable future.

During the past four months, approximately only 1600 journeymen have been employed; during the same period, only an average of about 140-145 apprentices have been working. Conversely, there has been approximately an average of 1200 journeymen unemployed and approximately 100 apprentices.

These figures are documented by (a) the Weekly Manpower Reports submitted by the employers to the Union and the Association, (b) the Weekly and Monthly Remittance Reports filed by contributing employers with the several fringe benefit funds and plans and (c) the employment records maintained by the JAC.

In further demonstration of this unemployment situation, the Trustees of the Pension and Welfare Funds adopted for an actuarial assumption, projected for the calendar year 1976, an average work force of 1500 men working 140 hours per month. This projection is now being reviewed and considered for revision in light of the further drastic cuts in employment, as hereinafter described.

In addition to this prevailing unemployment trend, commencing about three or four weeks ago, the City of New York and the State of New York, as a consequence of the "fiscal crisis," directly, and through their various agencies indirectly, have issued "stop orders" and cut back on virtually all existing

construction projects, and have placed "holds" on all jobs due for award, bringing to a halt virtually all City and State construction activities in the sheet metal industry. This cessation of work has thrown approximately 300 more journeymen out of jobs and onto the unemployment rolls.

The following is a list of the subject sites and the attending sheet metal contractor:

Jobsite	Contractor
Hunter College	Allied
Parkwest High School	Alpine
I.S. 314	Alpine
C.C.N.Y.	Alpine
Science and Technology Bldg.	Alpine
Hunter College	Alpine
P.S. 397	Alpine
Northeast Brooklyn High School	Brook
P.S. 90	Brook
Baskerville Hall	Brook
I.S. 43-44	Brook
Lehman College	Federal
North Academic Center	Federal
I.S. 240	General
Lehman College	General
I.S. 391	Howard-Martin
Hunter College	Howard-Martin
Recreation Center	Howard-Martin
New Dorp High School	Rice
Manhattan C.C.	Simpson
Flushing Bus Terminal	Space
Stoney Brook Hospital	Triangle
I.S. 227	Viking

It is a matter of public record (a) that the City has slashed $345,000,000 from its projected construction budget, leaving a balance of only $74,000,000 for limited renovation

work--which is now seriously in doubt, and (b) that proposed construction bond issues were overwhelmingly defeated by the public at the last election.

The public statements of Governor Carey and Mayor Beame unequivocally confirm the current unemployment disaster in the construction industry and make certain that until the financial crunch and pending "default" are resolved, there shall be no State or City construction programs.

The full impact of the debacle in the public sector is now starting to reverberate throughout private construction, with its attending domino effect of corresponding "cut backs," "stop orders" and lack of jobs.

It is in the context of this overwhelming unemployment, present and immediately potential, that the admission of any applicants into Local 28 membership is sought to be deferred. There are simply no jobs for these applicants--or for the current 1200-1400 unemployed journeymen or the 100 plus apprentices. To compel admissions at this time would be grievously unfair both to the applicants and to the Union. It would serve no purpose. It would constitute, at best, an act of futility and a cruel public hoax.

The admission of these applicants at this time would in nowise effectuate the purposes of the Affirmative Action Program--and the Order and Judgment of the Court--unless a "numbers game" is sought for other purposes; and deferment at this time for the cogent reasons stated--known and understood by all parties and the public--would in nowise dilute or undermine the Program. A deferment of admission now would actually demonstrate a desirable flexibility and fairness of the Program to recognize and deal effectively with specific problems as may arise from time-to-time.

It is respectfully requested that you exercise the power and authority vested in you as Administrator to defer the admission into Local 28 membership of those applicants who passed the Journeyman's Examination, and who are otherwise eligible, until such time as their admission would be meaningful for the applicants and the purposes of the Court's Order & Judgment and the Affirmative Action Program.

In view of the seriousness of the matter of admissions and the relief requested herein, it is respectfully requested

SOL BOGEN
ATTORNEY AT LAW

that you convene a formal hearing, with the attendance of a Court Reporter, for oral argument and the development of a written record.

Very truly yours,

SOL BOGEN

SB/fl/opeiu/153

cc. (By Hand)

Taggart D. Adams, Esq.
Assistant United States Attorney
1 Saint Andrew's Plaza (5th Floor)
New York, N. Y. 10007

✓ Beverly Gross, Esq.
Assistant Corporation Counsel
Municipal Building (Room 1757)
New York, N. Y. 10007

Dominick Tuminaro, Esq.
Assistant Attorney General
Two World Trade Center (Room 7825)
New York, N. Y. 10047

Rosenthal & Goldhaber
44 Court Street (9th Floor)
Brooklyn, New York 11201
Att: William Rothberg, Esq.

Recruitment and Training Program

162 Fifth Avenue, New York, New York 10010 (212) 691-0660

OFFICERS

BAYARD RUSTIN
Chairman

ROWLAND WATTS
Vice Chairman

EDWARD GONZALEZ, Jr.
Secretary

RICHARD RAVITCH
Treasurer

BERNARD J. ENGLANDER
DOROTHY I. HEIGHT
A. PHILIP RANDOLPH

JOHN SOMERS
Counsel

EXECUTIVE STAFF

ERNEST G. GREEN
Executive Director

WILLIAM M. ROSS
Deputy Executive Director

DONALD L. ROFFLE
Director of Operations

FRANK WILLIAMS, Jr.
Director of Finance

FIELD OFFICES

BOSTON, MASS.
1216A Blue Hill Avenue
Mattapan, Mass. 02126

BRIDGEPORT, CONN.
1208 Stratford Avenue
Bridgeport, Conn. 06607

BRONX, N.Y.
852-B Westchester Avenue
Bronx, New York 10459

BROOKLYN, N.Y.
849 Fulton Street
Brooklyn, New York 11217

BUFFALO, N.Y.
490 William Street
Buffalo, N.Y. 14206

CHARLOTTE, N.C.
2135 Beatties Ford Road
Charlotte, N.C. 28216

CLEVELAND, O.
10816 Euclid Avenue
Cleveland, Ohio 44106

CLEVELAND HOME TOWN PLAN
1846 West 25th Street
Cleveland, Ohio 44113

DURHAM, N.C.
801 Umstead Street
Durham, N.C. 27707

EVANSVILLE, IND.
300 Heidelbach Avenue
Evansville, Ind. 47713

GREENSBORO, N.C.
416 East Market Street
Greensboro, N.C. 27401

HARLEM, N.Y.
317 West 125th Street
New York, N.Y. 10027

HEMPSTEAD, N.Y.
8 North Franklin Street
Hempstead, N.Y. 11550

HOUSTON, TEXAS
Minority Women
Employment Program
2626 Calumet Drive
Houston, Texas 77004

LEXINGTON, KY.
637 Georgetown Street
Lexington, Ky. 40503

MOUNT VERNON, N.Y.
43 Fourth Avenue
Mount Vernon, N.Y. 10550

NASHVILLE, TENN.
1033-B Jefferson Street
Nashville, Tenn. 37208

NEWARK, N.J.
430 Springfield Avenue
Newark, N.J. 07103

NEW HAVEN, CONN.
156 Dixwell Avenue
New Haven, Conn. 06511

ORLANDO, FLA.
310 West Church Street
Orlando, Fla. 32805

PASCAGOULA, MISS.
1615 Convent Avenue
Pascagoula, Miss. 39567

PROVIDENCE, R.I.
200 Cranston Street
Providence, R.I. 02907

ROCHESTER, N.Y.
316 Hudson Avenue
Rochester, N.Y. 14605

SOUTH JAMAICA, N.Y.
127-03 111th Ave.
South Ozone Park, N.Y. 11420

WILMINGTON, N.C.
608 Red Cross Street
Wilmington, N.C. 28401

WYANDANCH, N.Y.
1319 Straight Path Road
Wyandanch, N.Y. 11798

YOUNGSTOWN, O.
1933 Hillman Street
Youngstown, Ohio 44502

December 2, 1975

Mr. David Raff, Director
Employment Law Clinical Program
49-51 Chambers Street
Room 220
New York, New York 10007

Dear Mr. Raff:

Due to the numerous complaints R-T-P, Inc. is receiving from its applicants who took the Local #28 Journeyman's Examination held on Saturday, October 11, 1975, this office feels compelled to bring to your attention, the sum and substance of those complaints.

Following notification of test results, our offices received a flood of telephone calls, as well as numerous office visitations from applicants who either (a) had questions to raise about their test scores or (b) complaints to make about the conditions and environment in which the test was given.

With respect to the questioning of the test scores, four basic issues were vocalized. In the first instance, most of the applicants felt supremely confident that they performed above minimal standards. In all but few cases, there were expressions of confidence in taking the examination and no doubts as to the outcome being anything other than favorable.

Regarding the matter of examination's conditions and environment, mention was made of the fact that:

1. A picket line was in motion in front of one of the test sites. The picketers were protesting in a manner that was distracting and insulting.

2. Photographers were moving about during the examination taking pictures of the minority group members as they assembled the work project. Again, this was very distracting.

3. Varying from test site to test site, instructions given by the examination proctors were in some instances, unclear, in some instances contradicting and in others, misleading.

R-T-P, Inc., would very much appreciate your office looking into the matter cited here.

Respectfully yours,

R-T-P, INC.

Donald L. Roffle

Donald L. Roffle
Director of Operations

DLR/spg

December 1, 1975

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION and THE CITY OF NEW YORK,

Plaintiffs,

-against-

LOCAL 638 ... LOCAL 28, SHEET METAL WORKERS et al.,

Defendants

71 Civ. 2877
(H.F.W.)

MEMORANDUM IN SUPPORT OF
MOTION FOR AFFIRMATIVE RELIEF

W. BERNARD RICHLAND
Corporation Counsel
Municipal Building
New York, New York 10007
ATTORNEY FOR PLAINTIFF
CITY OF NEW YORK

Beverly Gross
Ellen Sawyer
of Counsel

December 1, 1975

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION and THE CITY OF NEW YORK,

Plaintiffs,

-against-

LOCAL 638 ... LOCAL 28, SHEET METAL WORKERS et al.,

Defendants

71 Civ. 2877
(H.F.W.)

MEMORANDUM IN SUPPORT OF
MOTION FOR AFFIRMATIVE RELIEF

In its Opinion and Order of July 18, 1975, this Court specifically found that both the "JAC and Local 28 have a clearly deserved reputation in non-white communities of discriminating in the administration of the Local 28 Apprentice Program" and that they "are under an obligation to take affirmative action" to remedy the effects of their discrimination (at p. 36). Two specific directives of this court were the giving of an annual journeyman's test, held this year on October 11, 1975, and the giving of an annual apprentice test, scheduled for December 13, 1975. (Order of November 13, 1975). In addition, Local 28 and JAC are under a specific mandate from this Court to conduct an advertising and publicity campaign to dispel their discriminatory reputation (Order and Judgment, August 28, 1975, P 21 [h]). As to each of the above tests, Local 28 and JAC were further ordered to advertise that "The test is to be administered and that it will be conducted and graded in a non-discriminatory manner"

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(id, P 21 [b], [c]).

Notwithstanding the above, several of the sites of the October 11th journeyman's test were picketed by Local 28 members, led by the Recording Secretary of the union, Mr. Edward J. O'Reilly. The signs they carried expressed unmistakable hostility toward the Court's order and civil rights in general. Several of the non-whites being tested at these sites reported to the City's observers that they felt threatened and intimidated by this demonstration.

On November 3, 1975 an advertisement appeared in the Daily News, calling upon the public to "join us in our fight for equal rights" at a rally to "protest government court orders which dictate quotas, percentages and preferences for some in the sheet metal industry." On its face, the ad appears to have been placed by the union. The demonstration was held on November 6, 1975 at City Hall Park and Foley Square, attended by several hundred men carrying hand lettered signs. The union flag and banner were prominently displayed at the head of the parade, which was led by Mr. O'Reilly shouting instructions through a bull horn.

The following were among the messages on the signs:

> "Equal Opportunity for who? U.S. Government says only minorities. Says who?", "Black is beautiful tan is grand but Judge Henry Werker is getting way out of hand"; "Civil Rights Act 1964 for all 1975 taking rights away from many"; "Federal government has civil service and equal rights not 29%"

A Rally Reporting Card bearing the endorsement of Messrs. Stack and O'Reilly was given to the demonstrators for completion and return to the union, which is an express indication that the union leadership sponsored the demonstration.

It is submitted that the above actions, notwithstanding the First Amendment rights of the union members and leaders to demonstrate, flouted the terms of the Orders of this Court to refrain from any action which would tend to deprive individuals of opportunities, or which has the effect of discriminating, on account of race or national origin, and to take affirmative steps to dispel their discriminatory image in the minority community. Not only does such an image interfere with recruitment of non-whites to take Local 28 and JAC tests, but necessarily has a carry-over effect which creates a taint in the testing environment itself.

While not challenging the First Amendment rights of Local 28 members and leaders to demonstrate, we ask that they be directed to comply with their obligations under the Orders of this Court by taking affirmative steps to overcome their increasingly intensified negative image in the minority community, the inevitable consequence of the demonstrations.

There can be no serious argument that the demonstrations, in addition to the communication of ideas and exhortations, constituted conduct intended to influence in subtle ways the public, including the minority community. Bakery & Pastry Drivers & Helpers Local 802 v. Wohl, 315 U.S. 769,776 (1942, DOUGLAS, J.). The United States Supreme Court has held that when "speech" and "nonspeech" elements are so combined in the same course of conduct or demonstration, that conduct or demonstration, if violative of a sufficiently important governmental interest, can be enjoined even though such regulation involves an incidental limitation on First Amendment freedoms. United States v. O'Brien, 391 U.S. 367, 376 (1968). Clearly, the conduct here described

by Local 28 officials violated an important governmental interest expressed, generally, in federal and local anti-discrimination laws and ,specifically, in this Court's Order and Judgment of August 28, 1975. Further, there is an additional governmental interest in ensuring that a Federal Court's order, regardless of its relation to any specific subject matter, be fully complied with. It bears repeating that we are not asking for the suppression of any communications by the union but only that their conduct, apart from those protected communications, implement the terms of this Court's orders.

We believe that an even greater burden falls upon the union and its officials as a result of the actions above described. Advertising that a preference in selection will be given to non-white journeymen and apprentices is belied when a public message expressing a contrary attitude is conveyed at the same time.

Accordingly, we are asking the Court to direct the union leaders to take certain limited affirmative steps to assure that the non-white applicants who appear for the December 13th test find a supportive and non-discriminatory environment. The City of New York is prepared to offer its assistance in this regard by the appearance at the [illegible] Deputy Mayor Paul Gibson, himself a non-white, to participate in welcoming remarks.

Respectfully submitted,
W.BERNARD RICHLAND
Corporation Counsel
Attorney for Plaintiff
City of New York

Beverly Gross
Ellen Sawyer,
of Counsel

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION and THE CITY OF NEW YORK,

Plaintiffs,

-against-

LOCAL 638 ... LOCAL 28, SHEET METAL WORKERS et al.,

Defendants.

71 Civ. 2877 (HFW)

NOTICE OF MOTION

To: Thomas J. Cahill, United States Attorney
Attn: Taggart D. Adams, Asst. U.S. Attorney
1 St. Andrews Plaza
New York, N.Y. 10007

Louis J. Lefkowitz, Attorney General
Attn: Dominick Tuminaro, Asst. Attorney General
Two World Trade Center
New York, N.Y. 10036

Sol Bogen, Esq.
1 Penn Plaza
New York, N.Y. 10001

Rosenthal & Goldhaber
Attn: William Rothberg, Esq.
44 Court Street
Brooklyn, N. Y.

PLEASE TAKE NOTICE that plaintiff, the City of New York, will move this Court before the Honorable Henry F. Werker in Room 2703 of the United States Court House, Foley Square, New York, N.Y. at 5 o'clock in the afternoon of December 3, 1975, for an order directing the defendants to take certain affirmative steps to assure a) the fair administration of the apprenticeship entrance examination scheduled pursuant to the Order and Judgment of August 28, 1975, and b) that the injunctive relief afforded by that Order and Judgment is implemented effectively.

Respectfully submitted,

W. BERNARD RICHLAND
Corporation Counsel
Attorney for Plaintiffs
Municipal Building
New York, N. Y. 10007

by: _____
BEVERLY GROSS
Assistant Corporation Counsel
566-2197

Dated: New York, N.Y.
November 28, 1975

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION and THE CITY OF NEW YORK,

Plaintiffs,

-against-

LOCAL 638 ... LOCAL 28, SHEET METAL WORKERS, et al.,

Defendants.

71 Civ. 2877 (HFW)

AFFIDAVIT IN SUPPORT OF MOTION OF CITY OF NEW YORK FOR AFFIRMATIVE RELIEF

STATE OF NEW YORK)
: SS.:
CITY OF NEW YORK)

BEVERLY GROSS, being duly sworn, deposes and says:

1. I am an Assistant Corporation Counsel in the office of W. BERNARD RICHLAND, attorney for plaintiff City of New York and I am familiar with the facts of this case.

2. I make this affidavit in support of the City's motion to require the defendants to take affirmative steps to attain meaningful compliance with the Order and Judgment of August 28, 1975.

3. In accordance with said Order and Judgment, par. 21(c), an examination for admission to the apprenticeship program is scheduled to be held on Saturday, December 13, 1975. Based upon the occurrences recited below, it is reasonable to conclude that a directive from this Court is necessary in order to assure that defendants meet their obligation to act affirmatively to recruit non-white apprentices and to overcome their discriminatory reputation in the non-white community (Slip opinion at 36 - 37).

4. At the occasion of the Court-ordered journeyman's test held on October 11, 1975, a small group of Local 28 members picketed several of the test sites, led by Mr. Edward J. O'Reilly, Recording Secretary of Local 28. Reports made to me by observers for the City stated that many of the non-white testees reported that this activity was intimidating to them. Such perception indicates that the discriminatory reputation of defendants has been confirmed. No action has been taken by defendants to ameliorate this unfortunate result.

5. On November 3, 1975, an advertisement appeared in the Daily News, calling upon the public to "join us in our fight for equal rights" at a rally to "protest government court orders which dictate quotas, percentages and preference for some in the sheet metal industry." (Exhibit A, attached hereto) The ad, on its face, appears to have been placed as an official act of the union. The rally was held on November 6, 1975 at City Hall Park and Foley Square. There were several hundred men carrying hand lettered signs, the messages on which communicated dissatisfaction with the Court's decision. (The samples of these signs appear in photographs which we will offer at oral argument if the Court desires). Leading the parade of signs and prominently displayed at the front of the line were the union flag and banner. Mr. O'Reilly was particularly visible giving directions through a bull horn to the marchers. Mr. Edward Stack, President, who also carried a bull horn was accompanied by Messrs. Harry J. Rueckert, Financial Secretary/Treasurer and Robert Schluter, JAC Training Coordinator. (Photographs reflect the participation of this group).

6. While we do not here challenge the defendants' right to protest as a protected form of political expression, we think it appropriate under the terms of the order that they accept the consequences of their actions and be required to take every necessary step to dispel their discriminatory reputation and to actively encourage the participation of non-whites as union and apprentice members.

7. This application is made at this time since, in view of the above, it is legitimate to anticipate the possibility of further demonstrations by union members, as is their right, at the December 13th test site, placing a burden upon union officials and JAC trustees to design a plan of action contemporaneous with such demonstration, designed to offset the negative impact on applicants for the apprentice test. Specifically, we request that defendants be directed:

a. to advise the police in the test site precinct of the possibility that such demonstration may occur, and to advise the police that it has occurred if that be the case, and to request the presence of the police during such demonstrations; and,

b. in the event such demonstrations do occur, that the union officers and the JAC trustees be physically present and conspicuous at the test site to encourage and welcome the applicants, and, if necessary, to escort the applicants between the demonstration location and the test site location; and,

c. to confine the demonstration, in an attempt to limit the potential for physical violence, to a location no closer than across the street from the entrance to the testing site.

8. Even should there be no demonstration, we ask that the union officials and JAC trustees be physically present to make all necessary efforts to assure that the testing environment is welcoming and free of seemingly neutral incidents which may nonetheless, have a discriminatory impact.

WHEREFORE, it is respectfully requested that this Court grant the above relief and any other relief it seems appropriate.

Dated: New York, N.Y.
December 26, 1975

Beverly Gross
BEVERLY GROSS

Sworn to before me this
26th day of December, 1975.

Joseph F. Bruno
JOSEPH F. BRUNO
Notary Public, State of New York
No. 24-3497591
Qualified in Kings County
Commission Expires March 30, 1976

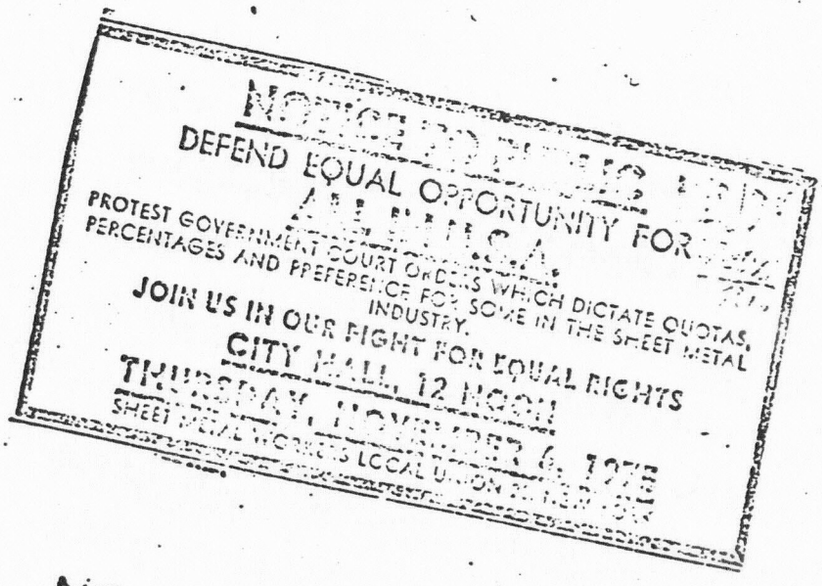
On THURSDAY, NOVEMBER 6, 1975 at 12 NOON a demonstration at CITY HALL will take place to protest the Federal Court Order which was rendered against Local Union which we consider discriminatory and unfair.

We urge all our members and families to attend this demonstration at City Hall. Please bring this postcard with you. Sign this card and turn it in to an officer of Local Union 28 at this demonstration. Assemble at City Hall under Local Union 28's banner.

Fraternally yours,

Edward Stack, President — Edward O'Reilly, Rec. Sec'y.

Member's Signature _____ I.A. # _____



NEW YORK DAILY NEWS
10/2/75 P. 10

EXHIBIT A

71 Civ. 2877 (HFW)
Index No..... Year 19.....

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION and THE CITY OF NEW YORK,

Plaintiffs,

-against-

LOCAL 638... LOCAL 28, SHEET METAL WORKERS et al.,

Defendants.

AFFIDAVIT IN OPPOSITION TO DEFENDANTS' MOTION

~~NOTICE OF MOTION~~
and AFFIDAVIT

W. BERNARD RICHLAND
Corporation Counsel,

Attorney for Defendants

Municipal Building,

566-2197 *New York, N. Y. 10007*

Due and timely service of a copy of the within
is hereby admitted.

New York, ...19.....

.....
Attorney for

To

....., *Esq.,*
Attorney for

3-50M-701127(7)

jqsr

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----------x

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Plaintiff,

- v s -

LOCAL 28, et al.,

Defendants.

----------x

71 Civ. 2877

B e f o r e :

HON. HENRY F. WERKER,

District Judge.

New York, N. Y.
December 3, 1975 - 2:00 p.m.

A p p e a r a n c e s :

TAGGART D. ADAMS, ESQ.,
LOUIS CORSI, ESQ.,
Assistant United States Attorneys
[Attorneys for EEOC]

SOL BOGEN, ESQ.,
Attorney for Local 28.

WILLIAM ROTHBERG, ESQ.,
Attorney for Employers Association.

DOMINICK TUMINARO, ESQ.,
Assistant Attorney General
[Attorney for New York State]

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Appearances: [continued]

BEVERLY GROSS, ESQ.,
Assistant Corporation Counsel,
[Attorney for New York City]

Also Present:

DAVID ROFF [Administrator]

[Case called.]

THE COURT: Good afternoon.

MS. GROSS: Good afternoon, your Honor.

The City makes this motion, your Honor, at the suggestion of your Law Clerk that you wish such a motion to be made and makes it specifically directed toward the apprentice examination coming up a week from Saturday at which logic would lead a reasonable person to anticipate the possibility of a repetition or continuance of prior activities by union members and officials which we believe are in complete derogation of the Court's order in the manner we have indicated in our affidavit and our brief.

We, therefore, while we recognize that this may not be considered an earth shaking matter we think that it goes to the subtle nature of discrimination and that the cumulative behavior of union officials at this point warrants a directive of the Court.

THE COURT: Mr. Adams.

MR. ADAMS: Your Honor, the EEOC while fully in accord with the goal espoused by the City's motion believes that this might be a time and a question which is better handled by judicial non-intervention. We think that an order of the sort sought by this motion is probably cumulative over the injunctive relief granted

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in the order and judgment dated August 28th.

In addition, we think that the United States has no evidence of its own nor has it been provided any that there is to be a demonstration or physical violence. We think there is a very thin line between exercise of First Amendment rights and activities which would be in derogation of the affirmative relief ordered by this Court.

There have been demonstrations in the past which the United States does not believe are are in derogation of the Court order with a certain exception of a few probably unrelated activities which we have now under investigation. But there has been no evidence at this point, we think, to support an additional order of the nature seen by the City.

However, we do think that the end sought by the City's motion are things that ought to be considered by the leadership of the union and taken into account because, as we reiterate, we believe there is a thin line between exercise of the rights of demonstration, First Amendment rights, and the activities that must be taken as affirmative action under your Honor's order.

THE COURT: Mr. Tuminaro.

MR. TUMINARO: Your Honor, I have become

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familiar with the matter only through the papers of the City and have no independent knowledge of the exact nature of what took place in the past both with respect to the test and later on with respect to the demonstration here. So we are not taking an affirmative position on the matter in question.

THE COURT: Mr. Bogen.

MR. BOGEN: Your Honor, there are a couple of things I would liketo say. One is that I would probably, on the papers and the statements made by the U. S. Attorney on behalf of the EEOC, would have nothing to say. I think on the reading of the papers your Honor should formally deny the motion out of hand. But it gives me an occasion to communicate to the Court with respect to the attitude expressed by the City in the papers.

In the first place, the small group or demonstration that the City alludes to in affidavit by Miss Gross without personal knowledge had to do with the journeyman's examination conducted on October 11, 1975. That examination, as your Honor might recall, was conducted in four separate sites at two times each, roughly eight periods of time when the test was given.

To the best of our knowledge -- and when I say us meaning the union editorially here -- there were

two pickets, two pickets throughout this entire period. A good portion of the time it rained and I understand the pickets disappeared. The matter was up for discussion and it developed that there may have been a third picket which we couldn't identify and that was at best. I think there may have been an allusion to force. There were only two pickets at eight sites taken into consideration.

The union did not learn of that until the eve of the examination and by the union I mean the chief executive officer, Mr. Stack,who is scheduled to be here. He might be in the building. We were led to believe this might be conducted in chambers and then we had information it was Room 107 and I suggested they might try the old courtroom downstairs.

Mr. Stack will be here and he has intentions to be here. He left about one o'clock from the union and he may get here during the course of the argument.

We learned of this at approximately 4:30. We attempted to do everything we could to discourage those people who we knew were involved with that. We couldn't. No incident took place. There was no violence. There is no intimidation. There is some allegation in the papers by Ms. Gross, again third or fourth removed, that there was a crowd or some people were intimidated.

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How, under the circumstances, is beyond belief, but that is it. The second incident that is related to in the papers has to do with a public demonstration that took place, I believe, November 7 or 6, your Honor. At that time --

THE COURT: There is Mr. Stack.

MR. BOGEN: Yes, let the record reflect that Mr. Stack and Mr. Rueckert walked in at this time.

At that time with the public demonstration, your Honor, there were approximately three to five hundred people involved. We didn't keep a tab. We attempted to catalogue who was going to be present. It was a mild demonstration in terms of the activity taking place in front of this courthouse and other places. As a matter of fact, this afternoon one took place in connection to some matter near here. There were no arrests, peaceful, orderly. Some of the placards may have been questionable in terms of taste but nothing inflammatory, nothing exceptional. No arrests, your Honor.

Certainly that represented an expression of free speech and assembly consistent with the First Amendment. There was some conversation after that demonstration, however, in a conference with Mr. Roff, your Court appointed administrator, to the effect that he was disturbed about

an ad that appeared in the Daily News. The ad is about three-quarters of a half inch by two to three inches.

THE COURT: I have seen it.

MR. BOGEN: It's of little or no significance as we understood it. Mr. Roff saw fit to communicate with the Court with respect to that. Mr. Roff was advised that there would be a demonstration and, as I understand it, he had no objection. He had no comment with respect to the activities that took place.

The ad, apparently because of the nature of some of the words for which I claim no authorship or any of the union leadership frankly, appeared. We say, in the first place, that I was a little surprised, if I can take a step back, with respect to the motion before his Honor except when Ms. Gross advised me as to such a motion she indicated she was directed or requested to bring on such a motion by your Clerk.

It would seem to me that the better procedure would have been, if Ms. Gross or the City, since the City seems to be isolated in bringing forward this motion at this time, would have been to bring the matter before Mr. Roff who has held himself available and accomodated the parties in a number of other areas. Rather than impose upon the Court's time and effort I respectfully submit

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the matter should have come before Mr. Roff for discussion and airing. There is nothing that has taken place from the date of your Honor's order and judgment that would remotely suggest that Mr. Roff is not qualified or available to exercise this. As a matter of fact, he exercised his jurisdiction repeatedly on matters that are before the Court today.

Practically, the two areas in this situation, assuming there was something to a demonstration, any activity at this point, the formality of it which the union would oppose, which the union has no knowledge of at this time would only glorify and make martyrs of some people who are really disgruntled with respect to the actions of this particular case. We are not looking to create a monster ourselves.

When the matter came to our attention, as I say, we brought it to Mr. Roff's attention, the first situation. With respect to the public demonstration we advised him of it. We say at this point, your Honor, we have no knowledge of any incident suggested, intended or whatever. We agree with Mr. Adams' observation that the Court intervention at this time, in all due deference to your Honor, would be highly improper from a practical standpoint in the application of his order and judgment.

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We don't believe at this time that there will be. There might be some stragglers. As a matter of fact, the last count we had was 680 applicants for the test. Normal percentage running we expect 500, 550 with the normal dropouts and no-shows.

The police are more than adequate to handle such a situation. The City in some respect, I think, is connected by way of employment of the police to take whatever steps it wants if it feels that. But to remotely suggest coming here before the Court in anticipation that these defendants, in this particular case the union defendants and also the J.A.C., need the direction of the Court, the heavy hand of the Court or the even-handedness of the Court in some way to guide them --

THE COURT: Say heavy. I am used to being the heavy.

MR. BOGEN: If the record says it, your Honor, I will stay with the record. That your intervention at this particular time is necessary -- it isn't. It would create more problems than it would resolve. We say to you, as a matter of law, your Honor has gone as far, possibly beyond discussion before the Court of Appeals tomorrow might suggest --

THE COURT: Be consistent, say beyond.

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MR. BOGEN: Possibly beyond the case as it stands now. With that the union has abided by it pending our appeals, whatever rights we have in the matter. We have conducted ourselves responsively. We have conducted ourselves in compliance. In those areas where there was a questionable matter we have taken it to Mr. Roff in a constructive fashion, if you will. We haven't hesitated to communicate with the parties to explore problems nor have they hesitated to explore problems with us. We think this is really the type of thing that adds heat to a situation that doesn't need any more heat.

We ask your Honor forthwith to deny the motion. We are prepared to meet and discuss anything constructive as we have in the past. The test isn't scheduled until next Saturday. I want to assure your Honor both Mr. Rueckert and Mr. Stack, who are the chief executive officers of the union, are here in anticipation of any development that I couldn't foresee. We have no information. We know of nothing. As a matter of fact, what we know of is that it's going to be a rather orderly examination right with the numbers that are involved. Frankly, and I say this with a great reluctance, the City's suggestion that there be a political figure that comes from the City, a deputy mayor to make speeches and

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welcoming remarks I think is unnecessary. I think it goes beyond what his Honor should have in mind in keeping this low key. It seems to me we should have a low profile in order to give the people an opportunity without the pressure, without the lines of police or the formality of anticipating problems.

We ask that the motion be denied, your Honor, forthwith.

THE COURT: I am willing to hear from you, Mr. Rothberg.

MR. ROTHBERG: I have no comments, your Honor.

MS. GROSS: May I respond?

THE COURT: I would like to hear from my administrator, if I may.

Mr. Roff.

MR. ROFF: Your Honor, I did, in fact, express concern over the advertisement which was placed in the Daily News. I also had concern over the pickets which did appear at the various test sites. As to the pickets first, it is true that the only picket that I saw in the morning was Mr. Edward O'Reilly who is an officer of the union although I understand he was supposedly acting as an individual, not as an officer, appeared at a time in which a great deal of minorities were standing outside

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the J.A.C. school getting ready to enter into the school. He also appeared in company with two other people outside one of the other test sites in the afternoon prior to the test being administered in full view of where the people saw him.

I did not intervene or feel it was necessary to intervene. It was done in an orderly manner. However, I have been advised by the recruitment and training program by letter which I received today, and which I will distribute to the parties, I just got it a few moments ago, that they in discussions with the people who did take the exam felt that it was, in fact, an interference with the way the examination was conducted and they did feel somewhat intimidated.

The fact was that the test sites were in a middle class white neighborhood, that the testing conditions were of such a nature that it is possible, although I have no hard evidence, that there was some feeling of intimidation. I did not want to have a similar thing occur where you are dealing with a fairly high minority population and a large test population at the J.A.C.

As far as the advertisement in the paper, I am disturbed that possibly union funds -- and I have no hard evidence that it was, but the ad did have on it

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"Sheet Metal Workers, Local 28" -- was used to purchase an ad of that nature in a wider circulation paper which admittedly is read by a great number of minority population, would use it, in fact, for advertising for the journeyman test in the Daily News and that it seemed to go against your Honor's order that the union should do what was necessary to alleviate its image as a discriminatory union in a minority community.

That having such ads, that having such demonstrations with the type of language that occurred on the site, that having people picketing outside the journeyman school while in and of itself were a series of minor little incidences, it creates an atmosphere in which the minority community could very well look at the union and say they may be on a Court order but they have not really changed in their intent.

I am not at all sure that what the City has put before you is necessarily the appropriate way to approach this problem. I am concerned that the union be put on notice that this type of conduct since the union members are addressed individually in the injunctive order as well as collectively as the union, that this kind of conduct will not be countenanced, will not be permitted and is not in keeping with the clear intent of the order

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that the minority community feel that they do have an equal opportunity to come into this union and have an equal opportunity to get jobs when they become available.

THE COURT: All right. Ms. Gross.

MS. GROSS: To clarify something that got fuzzy along the way, we are not directing ourselves to the potential of a demonstration or to the demonstrations which occurred before. We are addressing ourselves entirely to the obligation of the union leadership to take affirmative action to overcome a discriminatory reputation which has been intensified by these demonstrations.

We are not asking your Honor, nor would we address the question of First Amendment here, although we do think picketing is of such a nature that under certain circumstances it is not entirely protected. What we are addressing is the obligation of the union leadership to do something affirmative that has become something that has had a negative impact.

Counsel for the union in characterizing the union is speaking from the collective experience of we middleclass whites and saying it wasn't very important, it was well ordered, et cetera. The point of fact is that, to the best of my personal knowledge, on the basis of what people told me and I can't speak from personal experience

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because I am not black, but people who were there at the November 6th demonstration indicated a very apprehensive feeling as a result of that demonstration. There were black members and Spanish surname members who marched in that parade who told me personally of the pressure that was brought to get them to participate as brothers, as union brothers in that parade.

One indeed was required to wear a sign around his neck in front of the Federal Courthouse. He was the only one of the non-whites required to do that but he was required to do that. The point is that we cannot get inside people's heads and say, from our position, that wasn't terribly important. Because we have information to the contrary and as a matter of conscience obviously the intent and the result coincided and we are asking only that the union leadership be required.

Mr. Bogen talks about the intervention of the Court not necessary but it has to do with perception. The union leadership misperceived, to my way of thinking, what its obligation was under the order when it led that demonstration.

There is nothing to say they should have stopped the demonstration or individually they couldn't participate in the demonstration but they have an obligation to the

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Court to do something affirmative not done and as a result of what went on they have an even greater obligation at this point which includes anticipating.

THE COURT: I will listen if you have anything to say, Mr. Bogen.

MR. BOGEN: Briefly, your Honor. It's like a little bit of pregnancy. The City would like a little suppression. The Court administrator would like a little chilling. The union's obligation is quite clear under the order.

I submit it's obligated and fulfilled it in every respect. Obviously something in terms of creating atmosphere, et cetera, is a shadowy type of thing. It's different to grope with and handle. Notwithstanding that I respectfully submit every action we have taken has been taken in compliance.

I don't believe this Court could possibly consider directing that the union couldn't protest the Court's order and judgment. I don't think the Court would want to involve itself with that kind of suppression. We simply say to you that in our position nothing has taken place, there is no suspicion, there is no act that anything has taken place that would warrant the Court to even give any consideration to this kind of application

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at this time.

THE COURT: Well, I take this position, Mr. Bogen: You are fortunate in that you have somebody who follows the Black and Douglas view of First Amendment rather than the Warren view of the First Amendment. I would certainly not suppress anybody's protesting any order that I would happen to make.

However, there is a substantial interest that the Government has in executing the orders that the Legislature has put forth and I have made certain findings with respect to that. I think the union officers in particular have a duty to carry out not only the letter but the spirit of the affirmative action program and, consequently, I couldn't see any possible excuse or justification for their lending themselves to that protest because under my order that was certainly not an affirmative action stance on their part and they have that responsibility.

The individual union members have a somewhat lesser responsibility because they are not, under the circumstances, as knowledgeable as to what has gone on in this Court. But I think Mr. Stack and Mr. O'Reilly and Mr. Rueckert have an obligation to this Court under that order, until it's reversed, to do something affirmatively

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and I take it that a protest march organized, sponsored by the union is not an affirmative action.

It's negative action.

It is perpetuating the reputation that has gone on lo these many years since the first order in this matter. So that I do want to chill the officers to that extent and say this Court will not countenance further activity in that regard.

I assume that you have some whites as well as non-whites and Hispanics who are applicants. I think it would be a great thing if Mr. Stack were to go up there and tell these people this is an honest to goodness test, it's a fair test. We want you to do the best you can do on it and we will welcome you into the union and into the apprenticeship program. That is the kind of thing I want to see done here. I know what goes down the line. I am a realist. But this is the only way in which we are going to accomplish the ultimate goal.

It is the only way in which you are going to find somewhere along the line some peace in this union as well as in other unions. It's a question of how long can you resist the full force of the United States Government and the Court in a very important area. I am not going to say that the union membership as individuals

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cannot exercise their First Amendment rights but I will say that I was somewhat upset when I saw that the Sheetmetal Workers, Local 28, had filed this ad in the newspapers because any number of individuals could have done the same thing without putting the union on it and it wasn't necessary in the first place.

Any coercion to a union member to join any protest is not, in my book, an exercise of First Amendment rights. That is something else. And I would certainly, if there is any evidence ever produced again to me, I would certainly take a very, very dim view. I would be heavy about it, believe me.

What I am saying to you, and incidentally I am largely responsible for this application because I suggested that it ought to be brought in a formal way and that you ought to be here and Mr. Rothberg ought to be here so that we can let it be known that I am not happy with the reactions and maybe I will get a sign and walk around outside a union headquarters that you are being unfair to me in the exercise of my rights, but aside from that I wanted it to be brought in court formally so that we would know where we stand. I think Mr. Roff within his sphere is doing a good job but I think this thing is a very important element that should be gotten over to

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you, Mr. Stack, and the officers and the union, that I expect them not only to comply but to affirmatively comply by their actions. I don't think they have done it to date.

I am not going to grant your motion. I will say this to you: I am hopeful that there will not be a demonstration. I am hopeful that there will not be any intimidation but the exercise of your First Amendment rights and your compliance with my order are two different and distinct things. When I find that you are not complying with the order I will, of my own motion, bring you in here and have a hearing and see where we are.

MR. BOGEN: May I be heard?

THE COURT: Yes.

MR. BOGEN: I may fall into a trap, your Honor having denied the motion and made the statement, but I can't sit still in behalf of my clients with respect to one thing Ms. Gross said and your Honor picked up.

There is no evidence whatsoever, and the union categorically denies that any person, whether member or not, was intimidated, coerced or even suggested to join the demonstration. There is no basis in fact. As a matter of fact, if Ms. Gross or the City had such evidence I assure you that would have been produced. We would

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like to know about that, too.

THE COURT: All right.

MR. BOGEN: With respect to your Honor's statement on the record that there has been resistance or non-compliance with it I don't know the basis of his Honor's information. We conducted as expeditiously as possible -- we cooperated every possible way in conducting the journeyman examination to the extent agreeing to extend the time that turned out to be physically impossible. Mr. Stack involved himself with administering the examination and taking charge of it over and above his normal duties which would have been to the examining committee.

Mr. Ruecker himself was involved with the matter to the extent he could. We appeared and cooperated to the extent we could in every area we could. The only thing appears to be the two demonstrations, the one with the two, three, four people and a public demonstration. Your Honor, as I say, if that matter were brought to your Honor's attention on the basis it was a violation we would have that on a formal basis.

Certainly whatever rights we have, we don't think that that demonstration in any way violated the order. We have done everything we humanly possibly

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can to cooperate and move the matter effectively and affirmatively. It's costing the union a great deal of money at a time when we have no monies. We have not resisted the situation.

Your Honor making the statement on the record concerns me to the extent you believe to date we have resisted. I don't have any proofs or a record of that type of thing. I just don't know the basis for it and I arise to object to that only.

THE COURT: This is part of the problem, of course, as you pointed out yourself. It's just as difficult from your standpoint to view it as it is from my standpoint. But I get a feeling and, after all, we are talking about human relations here and when you get that kind of feeling I felt it my duty to tell you where I was. I also dislike the idea of my administrator arriving at the courthouse in the custody of two plainclothes detectives because of threats made against him individually.

MR. BOGEN: I assume your Honor isn't attributing that to the union.

THE COURT: I am not attributing that to the officers of the union or certainly not to you. But someone had the temerity to make those threats --

MR. BOGEN: We condemn them. We had nothing

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to do with it, your Honor. If there is any proof we moved effectively wherever it would be.

THE COURT: I would like to have someone at a union meeting get up and say this kind of thing is just impeding our cause. It's not helping us one way or the other.

MR. BOGEN: I don't know about a union meeting. I haven't attended any for a while but when the matter was reported to me by Mr. Roff over the telephone I communicated with our officers. Fortunately, or unfortunately, there was an executive board meeting that day and the matter was reported and there was a record to the effect they condemn it.

Just as the union can't fence with shadows, accusations, in animus times of threats and that type of thing I don't think the Court ought to be impressed with that situation either. If in fact your Honor's observation was a reaction without any basis for that or just conveying your attitude I accept it as such but your Honor to make a statement --

THE COURT: I am not accusing you. I am indicating to you my feeling about it. Believe me.

MR. BOGEN: We accept it as such. I will read what you say very carefully, maybe twice. His Honor having

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made that observation I just rise to object to it on the basis there was no proof before your Honor and it's been clarified as far as I am concerned at least for my client.

THE COURT: Let's hope that the 13th goes smoothly. To the extent that it's an admonition to everyone in the place that is my hope because if we have the police out in order to protect people to go into journeymens or apprentice examinations this will certainly be not in accordance with my order.

All right, gentlemen.

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The City of New York

LAW DEPARTMENT
MUNICIPAL BUILDING
NEW YORK, N. Y. 10007

ADRIAN P. BURKE, *Corporation Counsel*

December 30, 1975

David Raff, Esq.
Administrator
49-51 Chambers Street
Suite 220
New York, N.Y. 10007

Dear Mr. Raff:

I would like to bring to your attention the following administrative timetable imposed by the Affirmative Action Program (Program) adopted by Judge Henry F. Werker on November 13, 1975. Several of these matters require early resolution and immediate action by Local 28, the JAC, and, in some instances, yourself.

1. Work Referral (Journeymen) and Work Sharing (Apprentices):

By January 13, 1976, Local 28 and the JAC shall submit to you a written statement describing their work referral system for union members, including employment activities for apprentices (para. 21 [g] of Order and Judgment of August 28, 1975). You, as Administrator, have the power and obligation to modify such system to ensure that non-white journeymen and apprentices do not bear a disproportionate share of the unemployment.

To that end, paragraph 23 of the Program directs that there be an equitable system of work sharing among apprentices. To the best of my knowledge, a work sharing program is not being implemented as was ordered by Judge Werker on November 13, 1975, when he signed the Program. Despite the court order, almost two months ago, and the fact that there are, as stated by Mr. Bogen to Judge Werker on December 22, 1975, well over one hundred currently unemployed apprentices, there are no existing plans for establishing such a program. I am aware of your letter to Mr. Bogen of November 25, 1975, asking for the work history and minority status of every currently enrolled apprentice. I am also aware of Mr. Rothberg's response to your inquiry. In addition to being unable to determine from Mr. Rothberg's response whether current employment practices have a detrimental effect on non-white apprentices, I am unable to discern from his response whether any equitable methods for work rotation among apprentices presently exist.

By February 2, 1976, no fewer than 100 apprentices are to be indentured (Program, para. 22). The City requests that to ensure that these 100 new apprentices, as well as present apprentices, benefit from the court-ordered work sharing program, that Local 28 and the JAC be directed by you to submit by January 13, 1976 for your approval a written description of the work sharing program for apprentices to be implemented immediately. January 13th seems an appropriate date since it is also the date on which Local 28 is under court order to submit to you a statement of its work referral system for journeymen and apprentices for your study to be completed by June 15, 1976 (Order and Judgment, para. 21 [g]; Program, para. 44).

2. Admission to Journeyman Status of Non-Whites with Four Years Experience.

By January 1, 1976, there shall be established a program for admission to union membership of non-whites with four years experience in sheet metal work, or reasonably related employment, including experience in the Armed Forces or suitably related vocational training (Program, para. 15).

I have just received your letter, in response to Mr. Bogen's application for a 3-month deferral of this program, granting a temporary stay until 5:00 p.m. January 9, 1976. The City opposes any deferral of this program, which could be initially implemented without any substantial outlay of union funds. Moreover, this program represents an important method of access to the union for previously discriminated against minorities. Mr. Bogen's assertion, in his letter to you of December 23, 1975, that the October 11, 1975 test results indicate "that there are few, if any, non-whites who might be qualified with sufficient appropriate sheet metal experience" is completely unfounded. First, the journeyman tests and the 4-year experience selection represent two separate and distinct access routes; second, the October 11th test is not yet validated; third, there are many valid reasons why an experienced sheet metal worker might not adequately display his experience under test conditions, especially the rather oppressive ones prevailing at the October 11th examination. In sum, the City objects to Mr. Bogen's attempt to use the results of the October 11th test to subvert another important part of the Program.

Further, the City objects to the method proposed by you in your letter of December 29, 1975 to Mr. Bogen for resolving the problems inherent in establishment of the program on the following grounds:

a) The Program (para. 15[d]) contemplates that the matter of what constitutes "requisite sheet metal experience" be resolved by the tripartite Board of Examiners, to be composed presumably of impartial sheet metal experts. The Program does not contemplate that this determination be made by the union, yourself or the other parties, or any group except that charged with this responsibility under the court order, i.e., the Board of Examiners.

b) The City suggests that all counsel devise a simple application form stating the requirement as worded in the Program, i.e., "four years experience, obtained in the United States or elsewhere, in sheet metal work or employment reasonably related or similar to sheet metal work, including experience in the Armed Forces, or vocational training related to the skills of a sheet metal worker".

c) The City would have no objection to delaying temporarily an extensive publicity campaign until the Board of Examiners has been designated and has had an opportunity to meet and review the first group of applications.

Because the arrangements for establishing the program, from your and counsels' end, are relatively simple, the City requests that they be accomplished speedily. It should be no weighty matter to devise the requisite application form. And as mentioned, the City would be amenable to delaying temporarily the timing of an extensive publicity campaign.

In conclusion, the Program entrusts you with responsibility for establishing procedures for application to this program, for investigating and verifying the court-ordered criteria of eligibility for the program and for establishing the timing and conditions of admission. You are charged with directing that appropriate publicity arrangements for the program be made by Local 28, presumably before January 1, 1976. The arrangements for this program, because of the exigencies of time, would appear to require immediate attention.

3. Establishment of a Three-man Board of Examiners.

Directly related to the setting up of the four-year experience program for journeyman status is the immediate establishment of a Board of Examiners described by paragraphs 13 and 15 (d) of the Program. This Board shall be composed of a representative chosen by Local 28, a representative chosen by the plaintiffs and the State Division of Human Rights and a representative chosen by yourself.

The City requests that each party be directed by you to move as quickly as feasible, under time directives established by you, to appoint its representative since, although the journeyman test grading responsibilities of this Board will not devolve upon it before Spring 1976, its responsibility to rule upon the requisite sheet metal experience for the four-year journeyman program (Program, para. 15 [d]) commences, as of now, upon January 10, 1976.

4. Journeyman Tests.

a) It is the City's understanding that the 36 applicants who passed the October 11, 1975 journeyman's test were advised by Local 28 at a meeting on December 17, 1975, that they have until January 31, 1976 to exercise an option whether to accept immediate union membership or to defer such membership for anywhere up to 18 months from January 31, 1975, pursuant to paragraph 19 of the Program.

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b) Since another journeyman's test is to be administered in Spring 1976, the City suggests that counsel for the parties and the tripartite Board of Examiners begin no later than end-January 1976 to exercise their respective responsibilities towards resolving all questions relating to this test, e.g., its date, application form to be used, cutoff date for applications, the meaning of the eligibility requirement (Program, para. 10[d]) "one year of sheet metal work experience," ratios, etc. (Program, paras. 8-14). To avoid, to the degree possible, the inability of Local 28 to come forth with a validated test and with full appreciation of past difficulties on this point, the City requests that Local 28 be directed to obtain as quickly as practicable from Dr. Gottesman, or any other expert Local 28 may wish to employ, a validation report of the October 11, 1975 test with full disclosure of the underlying job analysis and other underlying data upon which the validation report is based. (If, as Dr. Gottesman claims in his letter of October 28, 1975 to Edward Stack, such validation study requires four months, Local 28's expert should be directed by you to present at least a progress report on his efforts in February, 1976). The report should of course include a written description of the elected method of validation and the reasons for its selection over other specifically described alternatives. This report is a separate document from that to be submitted by Local 28 no less than four weeks before the administration of the Spring 1976 journeyman's test, namely (1) a copy of the report demonstrating the validity of the Spring 1976 test and (2) a copy of the test to be administered (Program, para. 9).

5. Apprenticeship Examination.

By January 3, 1976, the JAC is to provide you and all parties with (a) the names, race identification, raw scores and rank of all candidates on each test given on December 13, 1975; and (b) the mean and median scores on each test given on December 13, 1975 of all identifiable racial and ethnic groups among the candidates (Program, para. 29).

The City requests that, at the time the JAC provides you and all parties with the minority ranked list from the December 13, 1975 examination, the JAC should also give you and all parties copies of the applications of all those test candidates eligible for advanced placement in the apprenticeship program, i.e., those minority candidates ranking among the first 180 who are eligible for advanced standing and all minority candidates over 25 who are eligible for advanced standing. The City further requests, based on this and other information you consider necessary pursuant to paragraph 35 of the Program, that you determine the number of advanced apprentices to be admitted from the December 13, 1975 roster in addition to such advanced apprentice candidates ranking among the first 180 minority candidates.

Since the first class of apprentices from the December 13, 1975 test is to be indentured by February 2, 1976 (Program, para. 22), the City requests that Robert Schluter, Training Coordinator of the JAC, be directed by you to establish during January 1976 procedures for the admission and placement of the advanced apprentices (Program, para. 33), including specific procedures for individual evaluations and placements in the appropriate grade level, to be effective as of February 2, 1976 (Program, para. 34).

Pursuant to his duties under paragraph 36 of the Program, the JAC Training Coordinator shall also develop a pre-examination study group program for apprentice candidates. The Program orders that the Coordinator shall submit to you a detailed program including but not limited to teaching methodology, program materials, and organization of the groups by November 27, 1975 (para. 36). I am unaware of the submission of such a statement. Balancing the reality that the apprenticeship examination has already taken place with the desire to obviate future administrative difficulties, which are foreseeable based upon recent history, I suggest that the November 27th deadline be extended to end-February but that it be observed.

Further, the City asks that Local 28 and the JAC be directed to commence their efforts, with progress reports to you and all parties, to validate each of the apprentice tests given on December 13, 1975.

It is worth noting that the Program orders (para. 32) that should Local 28 and the JAC desire those candidates selected for the apprenticeship program to appear for orientation and a physical examination, such orientation and physical examination must be conducted at a date sufficiently in advance of February 2, 1976 so that at least 100 apprentices from the December 13, 1975 roster may be admitted by February 2, 1976. In connection with the class to be indentured on that date, the City assumes that the racial composition of the class will conform with the overall 3:2 selection ratio for the December 13th test. Moreover, the City requests that the JAC be directed to provide you and all parties, together with the written statement of the work sharing program for apprentices to be similarly submitted, as proposed, by January 13, 1976, a proposed schedule of the classroom instruction for apprentices pursuant to the JAC's obligations under paragraph 23 of the Program.

6. Publicity Campaign.

By March 1, 1976 Local 28 and the JAC shall provide you and all parties with a written plan of an effective general publicity campaign designed to inform the non-white community in the City of all the non-discriminatory opportunities in Local 28 and the Local 28 apprentice program, as provided in both the Program and the Order and Judgment of August 28, 1975 (Program, para. 43). This written publicity plan, after a 30 day comment period for the parties, and a 30 day revision period for you, shall be ordered into effect by you by May 1, 1976.

7. Publication of Rights under Program.

By January 13, 1976, Local 28 and the JAC shall post conspicuous notices, in languages and at locations approved by you, advising individuals of their rights under this Program (para. 46). The City requests that copies of the proposed notices be submitted to all parties for comment by January 6, 1976.

8. Record-keeping.

The Program directs Local 28 and the JAC to keep and maintain extensive records (paras. 37-40). The City requests that, pursuant to court order (para. 37), copies of the lists required in subparagraphs (a)-(o) of paragraph 37 be submitted to you and counsel for all parties at least once every three months, commencing April 1976 for the previous quarter.

In addition, Local 28, or the JAC, shall submit to you and all parties (para. 38):

a) The name and race identity of persons admitted to journeyman status from the October 11, 1975 test by February 6, 1976 or earlier, depending on the date of admission; and

b) On January 1, 1976 (and every six months subsequently) the total number of:

1) journeyman members of Local 28;
2) pensioner members of Local 28 (as defined in para. 2 of the Program);
3) apprentices

These reports shall include the percentage of non-whites in each group.

In connection with the extensive record-keeping required of the JAC as to each apprentice, including application, selection, and work record, the JAC shall provide to you and all plaintiffs by February 22, 1976, a report of the names and ethnic classification of all persons who were rejected during the application and the testing period with the reason therefor, and the names of all persons whose application became inactive, and the reason therefor (Program, para. 39 [b]). By July 2, 1976, and every six months subsequent, the JAC shall give to you and all plaintiffs a report furnishing the names of all non-white apprentices and the names of contractors to which each was referred and the number of hours worked (Program, para. 39[c]). Further, the JAC should have submitted to you and all parties, as of first week of December, 1975, a report of all persons who filed or requested an application for the December 13th apprenticeship examination; such report shall give names, addresses, telephone numbers, race and national origins for those persons (Program, para. 39[a]). The City requests that this report be submitted without further delay.

The City reminds the JAC of its obligation (Program, para. 39 [d]) to furnish you with the name of any non-white apprentice who leaves the program, either voluntarily or through action of the JAC, within 20 days of the date JAC either drops or learns of the departure of any non-white apprentice. Such report must include a statement explaining why the JAC dropped the apprentice, the steps taken by the JAC to retain the individual, his training and employment history while in the program and, in the case of a voluntary departure, its explanation as ascertained by an exit interview.

In addition to the submission of reports and lists to you and all parties, all records ordered compiled by the Program shall be maintained for 10 years and available for inspection and copying by you or the parties upon reasonable notice during regular business hours or other mutually convenient time.

Very truly yours,

Ellen Kramer Sawyer
Assistant Corporation Counsel

EKS/dg

cc: Taggart Adams, Esq.
Sol Bogen, Esq.
William Rothberg, Esq.
Dominick Tuminaro, Esq.

E Amujer Appeals
(Jx, Lit)

TDA:cbm
70-1674

January 7, 1976

Sol Bogen, Esq.
One Penn Plaza
New York, New York 10001

Re: EEOC, et al v. Local 28, et al.
71 Civ. 2877

Dear Mr. Bogen:

In response to our letter of December 17, 1975 Local 28 on December 30, 1975 turned over two file drawers of materials relating to the journeyman's tests administered in 1968 and 1969. Also on December 30, Ms. Kramer of our office reviewed one file folder of correspondence from Mr. O'Reilly's office consisting in the main of union meeting announcements.

We have been advised informally that Local 28 does not maintain correspondence files or any other records regarding contacts with persons seeking entry into the union. Since this is a crucial point and the trial record clearly indicates that many such contacts were made by non-whites we request that a knowledgeable and responsible officer of Local 28 file with the Administrator a sworn statement detailing the following:

(a) whether or not those types of records (or analogous ones) described in our letter of September 9, 1975 are or ever were maintained by Local 28;

(b) the nature and scope of the search made for such records;

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LAW DEPARTMENT

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(c) whether the records described in the first paragraph of this letter are all of the records known by Local 28 to exist for which we requested inspection on September 9.

Very truly yours,

THOMAS J. CAHILL
United States Attorney

By: _____
TAGGART D. ADAMS
Chief, Civil Division
Telephone (212) 791-0051

cc: David Raff
49-51 Chambers Street
New York, New York

W. Bernard Richland
Corporation Counsel
New York City Municipal Building
New York, New York
Attn: Ellen Sawyer

Louis Lefkowitz
Attorney General
New York State
2 World Trade Center
New York, New York
Attn: Dominick Tuminaro

Rosenthal & Goldhaber
44 Court Street
Brooklyn, New York
Attn: William Rothberg

Lawyer Gen Lit
748-293

TDA:cbm

70-1674

December 17, 1975

75 DEC 18 PM 1:07
LAW DEPARTMENT

Sol Bogen, Esq.
One Penn Plaza
New York, New York

Re: EEOC v. Local 28
71 Civ. 2877

Dear Mr. Bogen:

This office has had no response to our letter of September 9, 1975 regarding the retention and availability of certain records in the possession of Local 28. We hereby request that the records previously identified be made available for our inspection on December 29, 1975 and from day to day thereafter until our inspection is completed.

We also request that the undersigned be advised by December 22, 1975 as to the nature and volume of records to be made available, their location, and the accommodations available for their inspection.

Please advise this office by December 29, 1975, through the means of affidavits, of the nature of the search made for the records, any known incompleteness and the reasons therefore, and a verification that the records produced are all those in the possession of Local 28. If any such records are in the possession of other persons we wish to be so advised.

Very truly yours,

THOMAS J. CAHILL
United States Attorney

By: _____
TAGGART D. ADAMS
Chief, Civil Division
Telephone (212) 791-0051

001634

DAVID RAFF
ATTORNEY AT LAW
SUITE 220
49-51 CHAMBERS STREET
NEW YORK, NEW YORK 10007

TELEPHONE {566-4874
566-4875

February 13, 1976

Sol Bogen, Esq.
One Penn Plaza
New York City, New York 10001

Dear Mr. Bogen:

Pursuant to your request of February 11, 1976 please be advised that the Administrator's representative on the Tri-Parte Board of Examiners is Mr. William Gonzalez a journeyman member of Local 28 in good standing.

The Plaintiffs representative is Mr. Charles Saunders, a journeyman member of Local 28 in good standing.

By means of this letter all parties are advised that there will be a meeting of all counsel and all three members of the Board of Examiners on Thursday, February 19, 10:00 A.M. at Mr. Adams' office. At that time I will charge the Board with its responsibilities. Additionally, you will provide a report with regard to the status of the apprenticeship program.

Other items to to be discussed will include: (1) the status of the validation study on both the journeyman test of October and the recent apprenticeship test, (2) establishing a method of providing plaintiffs with the data to check the employment and unemployment rates within Local 28, and (3) a report on the status of the discovery requests made by the E.E.O.C. of Local 28.

Yours truly,

David Raff

cc: William Rothberg, Esq.
Taggart Adams, Esq.
Ellen Kramer Sawyer, Esq.
Dominick Tuminaro, Esq.

TDA:cbm
70-1674

February 4, 1976

David Raff, Esq.
49-51 Chambers Street
New York, New York 10007

Re: EEOC, et al v. Local 23
71 Civ. 2877

Dear Mr. Raff:

The purpose of this letter is to request that the four matters detailed below be given consideration by you as Administrator, and, if deemed necessary, be subject of appropriate action or orders.

1. By letters dated December 17, 1975 and January 7, 1976 we requested of Local 23 certain information pertaining to our demand for production of materials relating to back pay claims. These requests, dealing with the nature of Local 23's records and the scope and thoroughness of the search, have been totally ignored. While certain documents have been turned over to this office their paucity and incompleteness makes the information sought even more necessary. We are concerned, inter alia that no correspondence has been made available and that only after the undersigned specifically urged that certain file cabinets in the possession of Local 23 be inspected were many of the documents discovered. We request that the Administrator undertake to demand that Local 23 produce the information sought in our letter of January 7, 1976.

2. We have had no response to our letter of January 12, 1976 requesting information on wages and hours. This information, for obvious reasons, is essential to a fair determination of back pay claims, and is under the control of Local 23 and the Contractors' Association. We urge the Administrator to issue an order requiring Local 23 to produce the relevant information.

3. We believe a procedure should be established for checking employment and unemployment rates within Local 23 and within the work jurisdiction of Local 23. Time and again

we are faced with assertions that great numbers of Local 28 members are unemployed and the corollary arguments that the Affirmative Action Program must be halted or curtailed. Yet we have no verified figures on unemployment. This office believes that it would be appropriate for the Administrator to devise a requirement pursuant to ¶14(a) of the Order and Judgment for full and regular reporting of the unemployment situation. Such a procedure should include input from the Contractors' Association as well as Local 28 and a means of verification.

4. The Affirmative Action Program requires that the apprentice test be validated. It seems advisable that the information on validation be gathered as quickly as possible since the figures now available to us tend to show that the December test had a degree of adverse impact on non-whites. There is no impediment to ascertaining within a matter of hours whether that impact was significant in a statistical sense. Furthermore, since another test is scheduled for later this year the analysis necessary for validation should begin at once with, we suggest, an interim report by the end of April or May at the latest.

Thank you for your consideration of these matters.

Very truly yours,

THOMAS J. CAHILL
United States Attorney

By: _____
TAGGART D. ADAMS
Chief, Civil Division
Telephone (212) 791-0051

cc: Sol Bogen, Esq.
One Penn Plaza
New York, New York 10001

W. Bernard Richland
Corporation Counsel
New York City Municipal Building
New York, New York
Attn: Ellen Sawyer

SOL BOGEN
ATTORNEY AT LAW

PENNSYLVANIA 6-7570
(AREA CODE 212)

ONE PENN PLAZA, NEW YORK, N. Y. 10001

March 2, 1976

David A. Raff, Esq.
49-51 Chambers Street - Room 220
New York, N. Y. 10007

Re: EEOC and City of New York
vs.
Local 638 . . . Local 28, etc., et al
71 Civ. 2877 (HFW)

Dear Mr. Raff:

This is an application on behalf of Local 28 for a formal hearing to determine whether the two members (Charles Saunders and William Gonzales) of the Examining Board proposed, respectively, by the Plaintiffs and the Administrator are qualified to be members of the Board or should be removed.

Based upon the resumes submitted on February 24, 1976 on behalf of Messrs. Saunders and Gonzales and the information that could be developed therefrom, it appears that neither designee may be qualified or sufficiently qualified by education, training or employment for such positions.

It is respectfully requested that the hearing be held as soon as possible and that Messrs. Saunders and Gonzales be present for examination and be afforded an opportunity to submit additional information or material.

Very truly yours,

SOL BOGEN

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opeiu/153

cc. Taggart D. Adams, Esq.
Ellen Kramer Sawyer, Esq.
Dominick Tuminaro, Esq.
William Rothberg, Esq.

DAVID RAFF
ATTORNEY AT LAW
SUITE 220
49-51 CHAMBERS STREET
NEW YORK, NEW YORK 10007

TELEPHONES {566-4874
{566-4875

April 13, 1976

Sol Bogen, Esq.
One Penn Plaza
New York, New York 10001

Dear Mr. Bogen:

This letter will confirm our telephone conversation this date in which you reminded me that you had advised me some time ago that you would be on vacation until April 26. Consequently, I am extending your time, and the time of all other parties, to comment on the Proposed Back Pay Rules until 12:00 noon, May 7.

I am also extending your time to appeal my ruling on the tripartite Board of Examiners to May 7.

In regard to your inquiry as to the appropriate appeal procedure to challenge the non white composition of the tripartite Board, it is my position that the fact that the Board is composed of two non whites and one white is not a proper basis for an appeal to me since the AAP did not establish the racial composition, rather the composition was determined by the chance selection of the parties and in no way conflicts with the Court of Appeals Decision. Consequently, if you wish to pursue this matter the appropriate forum is the Court.

Yours truly,

David Raff

cc: Hon. Henry F. Werker
William Rothberg, Esq.
Taggart Adams, Esq.
Ellen Kramer Sawyer, Esq.
Dominic Tuminaro, Esq.
Gerald Dunbar, Esq.

THE CITY OF NEW YORK
OFFICE OF THE MAYOR
BUREAU OF LABOR SERVICES

250 BROADWAY
NEW YORK, N. Y. 10007
Telephone: 566-6755

PAUL GIBSON, JR.
Deputy Mayor

DARRYL E. GREENE
Director

OFFICE OF CONTRACT
COMPLIANCE/ CONSTRUCTION

JAMES McNAMARA
Director

April 7, 1976

Mr. David Raff
Administrator
49-51 Chambers Street
Suite 220
New York, N.Y. 10007

Dear Administrator Raff:

Please find enclosed reports and memorandums from R-T-P, Inc. concerning the distribution of applications for journeymen with four years experience who wish to apply for admission persuant to the court order.

R-T-P has previously reported that many potential applicants are not availing themselves at this time of filing for admission because of the initiation fees that must be paid with no assurance of job opportunities. Please advise if there is any possibility of deferring initiation fees and dues for such applicants until such time as the program has developed a system for employment.

Sincerely,

James McNamara

Attachments

cc: S. Bogen
T. Adams
E. Sawyer

001640

Recruitment and Training Program

MEMORANDUM

TO : JAMES MCNAMARA,
DIRECTOR OF CONTRACT COMPLIANCE CONSTRUCTION

FROM : SAM MASON, MCDA PROGRAM SUPERVISOR SM

SUBJ : UNION DUES AND INITIATION FEES re Local 28

DATE : Feb. 25th, 1976

Jim, unless some changes can be made in the policy for requirements as it relates to union dues and initiation fees, I think it would be very hard to recruit applicants due to the lack of work. But we will, as we always have, try our best to reach all the qualified people, while hoping that we can get some favorable decisions from the courts or the administrators that may permit deferment of payments until a four year experienced applicant actually has a job.

↓ can be pegged into employment 16(a)

Replaced 16(a)

/lc

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DAVID RAFF
ATTORNEY AT LAW
SUITE 220
49-51 CHAMBERS STREET
NEW YORK, NEW YORK 10007

TELEPHONE {566-4874
{566-4875

April 13, 1976

Mr. James McNamara
Director
The City of New York
Office of the Mayor
Bureau of Labor Services
250 Broadway
New York, N.Y. 10007

Dear Mr. McNamara:

In response to your letter of April 7, 1976 I must inform you that I do not have the authority to defer the payment of union dues. However, pursuant to paragraph 16(b) of the Affirmative Action Program a "four year experience" applicant could make an appropriate application for a deferral of the initiation fee.

All "four year applicants" should be advised as to the contents of paragraphs 15, 16 and 17 of the Program. Additionally, the applicants should be given a realistic appraisel of the economic conditions currently prevailing in the industry. While such appraisel will retard recruitment, I think it would be misleading and, in fact, damaging to the Program if non-whites were not told of the constricted labor market.

Yours truly,

David Raff

cc: Sol Bogen, Esq.
William Rothberg, Esq.
Taggart Adams, Esq.
Ellen Kramer Sawyer, Esq.
Dominic Tuminaro, Esq.
Gerald Dunbar, Esq.

Correspondence Relating to Methodology

of Preparation of

December 13, 1975

Apprenticeship Examination

001643

ROSENTHAL & GOLDHABER
COUNSELORS AT LAW
44 COURT STREET
BROOKLYN, N.Y. 11201

(212) 237-9559

BENJAMIN ROSENTHAL (1905-1969)
MAX M. GOLDHABER
RICHARD F. GOLDHABER
WILLIAM ROTHBERG
ARTHUR M. GABOR

LONG ISLAND OFFICE
150 BROAD HOLLOW ROAD
MELVILLE, N.Y. 11746
(516) 421-2468

December 9, 1975

Judge Henry F. Werker
U.S. Courthouse
Foley Square
New York, New York

Re: EEOC and City of New York vs. Sheet Metal Workers, Local No. 28 et al

Dear Judge Werker:

A problem has arisen concerning the interpretation and implementation of the Order and Judgment entered in the above action. Upon discussion with the Administrator, it was suggested that I write to you outlining the problem, with the hope of obtaining a speedy resolution.

The difficulty concerns itself with the type of examination to be given to apprentice applicants. Said examination is scheduled for Saturday, December 13th, 1975.

Paragraph 21 (c) of the Order and Judgment states as follows:

> "JAC shall administer at least once a year, or more often if the Administrator shall order, a non-discriminatory apprentice entrance test consisting solely of (i) a mechanical comprehension aptitude test previously given by JAC in April, 1969, or such variations thereof which have been professionally developed and validated in accordance with EEOC guidelines..."

The JAC has proposed giving a 100 question mechanical comprehension aptitude test prepared by Stevens Institute of Technology in conjunction with the Psychological Corporation. These 100 questions consist of the exact same questions used on the

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April, 1969 (68) test together with 32 additional questions as prepared by Stevens and the Psychological Corporation. It has been agreed by all the parties that the procedures followed by the Psychological Corporation in order to lengthen the Bennett Mechanical Comprehension Test to a 100 item format were quite appropriate and in accordance with accepted professional standards.

The JAC was reluctant to include the identical questions previously used in April of 1969 as part of the new examination. That test is part of the Court record as well as an exhibit to pre-trial depositions, and it is the JAC's concern that this test is presently in the hands of outside parties. We felt constrained, considering the language of the Order and Judgment, and as an accommodation to the parties, to include the questions used on the 1969 test as part of the new test.

In order to alleviate the security problem and to have a better spread of scores, the JAC expanded the April 1969 test from a 68 question test to a 100 question test and proposed to rank applicants based upon their score on this test.

We have been advised by the Administrator that he cannot approve the use of this test in that it would conflict with the language of the Order and Judgment as quoted herein above. He has proposed that we give the 100 question test but only count the 68 questions that were used in the 1969 test. He advises that he has done this with reluctance, but that according to the literal language of the Order and Judgment, he has, in his opinion, no alternative.

Since it is impossible to validate an examination prior to its being given, the question raised is whether or not Your Honor meant that the JAC could only give the exact same examination that was used in April of 1969, for the purpose of selecting the next apprentice class.

At this point there are four (4) options in regard to the test to be given on Saturday:

1. Give the exact same test that was given in April, 1969 and rank according to performance on that test.

2. Give the expanded 100 question test as described herein above but do not use it for purposes of selection. Have a random selection of all applicants and use the results for validation of future tests.

3. Give the expanded 100 question test and select based upon performance on the 68 questions previously given in April, 1969 only and validate the entire 100 question battery for future examinations.

4. Give the 100 question examination and select on the basis of performance on all 100 questions and validate this examination for future use as proposed by the JAC.

Your guidance is requested.

Very truly yours,

ph

William Rothberg

C.C. David Raff, Esq.
Taggart Adams, Esq.
Beverly Gross, Esq.
Dominick Tuminaro, Esq.
Sol Bogen, Esq.

Baruch College
The City University of New York
17 Lexington Avenue
New York
N.Y. 10010

December 9, 1975

Mrs. Beverly Gross, Esq.
New York City Law Department
Municipal Building (Room 1757)
New York, New York 10007

Dear Mrs. Gross:

Herewith, hopefully, are our last comments/conclusions concerning this extended passion play:

1. It is clear that the proposed administration of the Bennett Mechanical Comprehension Test (in either its original 68-item or expanded 100-item format) and subsequent selection by rank of apprentices for the JAC program does not meet currently accepted standards of professional practice in industrial psychology, EEOC (or proposed EEOCC) guidelines, nor U.S.D.J. Werker's order.

Most of the reasons in support of that conclusion we have presented to you in writing previously (see sections A, B, and D of our letter dated 12/1/75).

In addition, these points may also be raised:

a) The use of a substantially altered test (or even the original test, with a population almost seven years after the original testing) opens the possibility of the existence of "adverse impact" on this test, now, even though no evidence for such was documented then.

b) Even if the test (in either version) was presently supported by adequate validity and fairness evidence (which it is not!) it has not been shown to be sufficiently precise to support the administrative practice of ranking candidates for selection -- as required in the proposed EEOCC guidelines (Final Committee Draft, 6/5/75, Part II, P 12c(7)).

2. The question of possible unfairness to groups protected under Title VII is ameliorated considerably through the procedure of selecting non-whites and whites from separate parallel rankings.

However, there remains the (unspecifiable) possibility of unfairness to persons rejected inappropriately (on an unvalidated instrument) -- unfairness with respect to others within their ethnic group.

3. In our opinion, accepting the operational use of a measure for which inadequate validity evidence exists, and attempting to justify it or ameliorate the situation with post-hoc administrative arrangements of a questionable nature (separate quotas with no empirical justification) sets a dangerous precedent which is in direct conflict with the substance and intent of the EEOC guidelines.

4. If the selection were made randomly from each list, rather than by ranking, one would avoid all of the objections noted above as well as provide a more optimum situation for demonstrating the (probable) validity of the test.

The "cost" of such would be only somewhat lower selection accuracy this time around; to be gained is increased accuracy for the future.

5. In light of the continued security problems with respect to the Mechanical Comprehension Test, it is, in our opinion, foolish to be continuing the investment of many persons' energy as well as JAC money in further work with this instrument. Even if a "perfect" validation study could be accomplished, the security problems remains for next year, and next ....

6. All else being equal, we have no strong feelings either way as between the 68-item format, and the Psychological Corporation expanded 100-item version of the test.

Sincerely,

Joel Lefkowitz, Ph.D.
Associate Professor

Joy M. Finkelman, Ph.D.
Associate Professor

Baruch College
The City University of New York
17 Lexington Avenue
New York
N.Y. 10010

Department of Psychology

December 1, 1975

Mr. David Raff, Esq.
Employment Law Clinic
49-51 Chambers Street
Suite 220
New York, New York 10007

Dear Mr. Raff:

Herewith are our comments, as per your recent request to us to provide further detail to our evaluative conclusions which were expressed to Mrs. Gross (letter dated November 12, 1975).

Our comments are only based upon our exposure to the following documents:

1. U.S.D.J. Werker's opinion (7/18/75)
2. U.S.D.J. Werker's order and judgment (8/28/75)
3. Copy of Follow Direction Reading Test (Version Two), with cover letter to Mr. William Rothberg, Esq. from Dr. Jay Gottesman (dated 11/7/75).
4. Copy of Basic Arithmetic Applications Test
5. Copy of Bennett Mechanical Comprehension Test (Form T)
6. Copy of the expanded Bennett Mechanical Comprehension Test, labelled "Qualification Test," along with explanatory cover letter to Dr. Jay Gottesman from Dr. Richard Buchanan of the Psychological Corporation (11/18/75).
7. Court exhibits W (Validation study dated 5/7/74), X and Y (additional data analyses)
8. Copy of letter to you, from Dr. Jay Gottesman (11/24/75) with several enclosures (enclosure "under separate cover" not included).

Please note, also, that we received copies of items numbered five through eight after our letter of 11/12/75 to Mrs. Gross.

A. Absence of any "Job Analysis"

1. There is no evidence of any independent "job analysis" having been performed. In the absence of such, there is no acceptable enunciation of the skills, abilities, etc. needed to perform successfully in the apprentice program.

a) For example, there is no indication that the mere

existence on the job of certain written materials (requiring a given level of reading skill) renders those skills necessary or critical for effective performance--i.e. that they should be elevated to the standard of providing a "job requirement"--hence requiring a screening test.

b) Moreover, there is no indication of any attempt to ascertain the extent to which those skills, even if justified, might be taught during the apprentice program (which is especially pertinent in light of the "remedial goal" of the court in desiring that a larger proportion of non-whites be hired).

2. The absence of a job analysis contributes to our perplexity as to why the court found a "Read and Follow Directions Test" at all pertinent--even for a validation attempt. It is not at all clear as to whether the measurement aim of such a test is the applicant's reading skill, skill in following directions--either written directions only or written and oral, or some combination of both reading and following directions.

B. Adequacy of the Criterion

1. Although sometimes quite acceptable and logical, there is almost always a question concerning the relevance of a test criterion (in this case, the Journeyman's "hands on" test) by which to validate a selection test. Such questions are pertinent here, insofar as there have been no "job analyses" demonstrating clearly a correspondence between "test skills" and "job skills."

a) The Court (Note 16 of the Opinion, P. vi) pointed out this suspect nature of the criterion, and we can find no evidence of any attempts at further "criterion development" in the ensuing time since the use of that criterion in the original validation study (June, 1973).

C. The Follow Direction Reading Test, Form Two

1. Section A2 of this letter indicated the ambiguity of measurement aim we find associated with this effort. Is the above-named test an attempt to fulfill the aims of the court for a "Read and Follow Directions" test? We interpret the court's emphasis to be on "following directions." The proposed test seems to emphasize (both in name and substance) "reading" (see point 4d following).

2. Perusal of the test itself reveals a repetitious, tedious, 100-item content which, whatever else it measures, almost certainly taps a motivational, "stick-to-itiveness," or "test-taking propensity" as well. It can be readily documented that such a measure is likely to discourage disproportionately the group of non-whites for whom the court has set a "remedial goal"--thus resulting in an "adverse impact." There is no offsetting evidence presented for the job-relatedness of such motivational attributes.

The de- motivating qualities of such a test (especially when ethnically disproportionate) are relevant even under the proposed conditions wherein the test is to be used for validation purposes only and not for actual selection. Especially in these circumstances where, following testing in the previous validity study, 28% (60 of 217) of those tested opted to not enter the program.

3. Dr. Gottesman's brief letter (Nov. 7, 1975) describing summarily the test development procedures for the Follow Directions Reading (FDR) Test, is inadequate for us to evaluate the appropriateness of what was done and clearly does not constitute "a copy of a report demonstrating the validity of each component of the apprentice entrance test to be administered" (Court Order, P. 12).

However, notwithstanding that limitation, the following questions may be raised with regard to the procedures described briefly in the cover letter of 11/7/75.

a) Ordinarily, barring special circumstances, accepted practice is to develop a test using as subjects those from the same population for whom the test is ultimately intended. Why the use of blue collar mechanics as well as steamfitter apprentices?

b) The mere existence of reading materials of a certain level on the job does not substantiate their importance as a necessary determinant of job success--hence potentially valid job requirement.

c) Moreover, the written samples were taken "on-the-job" but the validation criterion is a journeyman's test, with no "job analyses" demonstrating the correspondence between test content and job content.

d) We have not been able to obtain a copy of the "Dale-Chall Formula" for determining the grade level equivalent of written material, and we admit our lack of expertise in this area. However, we raise a question concerning the accuracy of characterization afforded any written material by means of a formula published in 1948. The scale used may be descriptively accurate and internally consistent, but what is characterized as "6th grade" level (from what geographic region?) in 1948 most probably does not correspond to current "6th grade" reading abilities of New York City public school students. (Of course no test developer can be held responsible for current public school academic standards; we are questioning merely the descriptive accuracy of the "6th grade" label.)

4. The substance of the Follow Directions Reading Test, Form Two does not seem at all to resemble a "'Read and Follow Directions Test'...based on a wide sampling of materials currently in use at the Sheetmetal Apprentice Training School, in the shops and in the field" (Original validation study recommendation #2, P. 5).

5. Dr. Gottesman's letter to you (Nov. 24, 1975) seems not to the point and almost appears to be obfuscatory:

a) The relevance of a concurrent validity paradigm (wherein the "predictor" FDR test is administered at the same time as the criterion--the journeyman's test, rather than at the time of "selection" four years earlier) to a future predictive selection process is difficult to assess. This is most especially the case where attrition has occurred from 217 initial testees to 87 who took the experimental FDR test--and no data is available itemizing the demographic characteristics or test scores

of those who became unavailable at each stage of the process.

b) The statement that the current 100-item test format emerged "from a 200 item format" seems inexplicable. It is our understanding that the original experimentally-administered version of this test was comprised of only 10 items.

c) Moreover, it is likely that the court order permitting further developmental use of this test was written in the context of the test's brief format.

d) Further reiteration of the test's alleged validity in other job situations (equipment operators for the Public Service Electric and Gas Co. of New Jersey) is moot--especially in the absence of job analyses showing comparable skill and ability requirements for the two sets of jobs, comparable criteria, comparable populations, conditions of testing, etc.

e) Reference to the "extensive examination of various parameters of readiability (sic) against various criteria using the FDR" is misleading insofar as (can best be assessed from the sparse evaluation offered) both "predictors" and "criteria" appear to be derived from the test itself. The "criteria" do not appear to relate to any external measurement variables (job-related or otherwise). The further statement, then, that "The Dale-Chall formula emerges as the best predictor of the criteria" seems not only meaningless to the points at issue, but tendentiously misleading.

f) Points one through four, above, with their sub-sections indicate, contrary to Dr. Gottesman's opinion, our firm view that no reasonable case has been made for the content validity of the FDR test. Moreover, point #2 indicates how such a test may indeed under the present circumstances "influence, for better or for worse, anyone's chances of being selected."

D. Mechanical Comprehension Test

Our discussion here is based largely on the original validation study by Dr. Gottesman (exhibit W). Although we have several reservations concerning that study which lead us to question the court's original findings, we will limit our concern to only those matters which directly affect your present decision-making tasks.

1. The primary point to be made is that there exist reasons to believe that the original validity estimate reported in the validation study is a serious over-estimate of what was actually the case at the time:

a) A considerable number of apprentices, 42, equal to 29% of the remaining validation sample, were not used for criterion data because of their apparently successful "early graduation." Since "approximately half of those who graduated early ranked in the bottom

half of entrance exam scores" (P. 20, District Court's Opinion), their appropriate inclusion in the validity computations is likely to have lowered the resultant correlation coefficient considerably. (That is, if the criterion is at all relevant, most of those 42 "successes" are likely to have scored well--even those who scored poorly on the mechanical comprehension entrance exam.)

b) All correlation coefficients reported were based on the original validity calculations rather than from predictions based on those findings, using a different group of applicants. Such "cross-validation" or "validity extension" almost always yields significantly lower validity coefficients which are, however, more in line with what one might actually expect in subsequent use of the predictor tests.

Some attempts at cross-validation are presented in Technical Appendices C and D of the validation study, although not specifically noted in the body of the report. Those cross-validations omit any reporting of the obtained validity coefficients. They do employ a method likely to give the most 'optimistic-appearing" results (gross classification comparisons of those at the top and bottom extremes of the distribution). Nevertheless, the results appear, upon inspection, likely to have resulted in a markedly lower estimate of the validity of the mechanical comprehension test in this situation, if the validity coefficient(s) had been calculated.

2. Secondly, as noted in section B1 of this letter, and recognized by the court, there remains the unanswered question concerning the relevance of the criteria measures upon which the test(s) were validated.

3. A most important note should be taken that it is now almost seven years since the testing occurred (April, 1969). It is well known, in industrial psychology, that validity coefficients are notoriously "unstable" over such periods of time--due to changes in the nature of the applicant population, the nature of the job, the qualities which determine success on the job, situational parameters which affect performance on the test and/or criterion, as well as a multitude of possible other (frequently unknown) relevant changes over time.

Consequently, there is little or no reason to accept such dated evidence of validity as meeting, for our present purposes, the standards for validity or job-relatedness, of the American Psychological Association, the EEOC, or the specific court order (P. 12) in this case.

4. The procedures followed by the Psychological Corporation (as described in the communications to Dr. Gottesman, 11/18/75) in order to lengthen the Bennett Mechanical Comprehension Test to a 100-item format seem quite appropriate and in accordance with accepted professional standards. (The question of whether such a change is needed or advisable is a separate matter on which we do not have sufficient information to comment.)

However, we should point out that at best the statistical

estimates offered of the validity of such a revised measure are just that, statistical estimates, and are to be accepted conditionally pending empirical confirmation. Moreover, the present situation does not even meet the conditions necessary to qualify as "at best." The Psychological Corporation estimate is based on the validity reported in the original validation study, which we have indicated (points 1-3, immediately preceding) represents an improper base from which to calculate such estimates.

In sum, then, we conclude that:

1. No test has been proposed for which, at present, there is sufficient validity evidence to justify its use as an apprentice selection examination.

2. There is little justification for the use of the Follow Directions Reading Test Form Two as presently constituted, even for purposes of attempting to establish predictive validity.

Sincerely yours,

Joel Lefkowitz, Ph.D.
Associate Professor

Jay M. Finkelman, Ph.D.
Associate Professor

P.S. Please excuse the somewhat rambling style and repetitiousness of this letter. Not only were we brought into this matter "at the 11th hour" so to speak, but it has been rather difficult to achieve an overview of the work performed in this selection study because of the piece-meal fashion in which the documentation has been provided (i.e. communications dated 11/7/75, 11/18/75, 11/24/75).

/cg

PROFESSIONAL BIOGRAPHY:
Joel Lefkowitz

~~As of: Spring, 1973~~

PERSONAL HISTORY:
Date of birth: October 17, 1940
Place of birth: New York City
Marital status: Married, two children
Home address: 109 Rugby Road, Brooklyn, N. Y. 11226
Telephone: (212) 941 - 8538

EDUCATION:
B.B.A. City College of New York - June, 1961 - Cum Laude
M.S. Western Reserve University - January, 1963 - in Psychology
Ph.D. Western Reserve University - September, 1965 - Industrial Psychology Specialization

EMPLOYMENT HISTORY:
1961-62: Hospital Psychologist; Highland View Hospital; Cleveland, Ohio
1962-63: Vocational Counselor; Vocational Guidance and Rehabilitation Services; Cleveland, Ohio
1965-70: Assistant Professor, Psychology Department; Baruch College, City University of New York
1971 - Associate Professor, Psychology Department; Baruch College, City University of New York
1966 - Staff Associate (part-time); BFS Psychological Associates, Inc.
1971 - Research Staff (part-time): New York City Rand Institute

ACADEMIC AND PROFESSIONAL HONORS, AWARDS, etc.
Undergraduate Cum Laude, 1961
Beta Gamma Sigma, National Honor Society, 1961
U.S. Office of Vocational Rehabilitation Traineeship, 1961-63
National Science Foundation Predoctoral Fellowship, 1963-65
Certified Psychologist, New York State, 1968
Pilot Project Research Grant (#NI70-065-P -12) from the National Institute of Law Enforcement and Criminal Justice, Law Enforcement Assistance Administration, United States Department of Justice, 1970
Member of the Doctoral Faculty, Baruch College School of Business
Administrative Supervisor, Evening Session, Psychology Department, Baruch College
ABPP Diplomate in Industrial and Organizational Psychology, 1972
PRESIDENT, DIVISION OF PERSONNEL PSYCHOLOGY, NEW YORK STATE PSYCHOLOGICAL ASSOCIATION, 1974-1975.

PROFESSIONAL MEMBERSHIP:
American Psychological Association
Eastern Psychological Association
New York State Psychological Association
Metropolitan New York Association for Applied Psychology
American Association for the Advancement of Science
American Association of University Professors

PUBLICATIONS:

Monographs and Chapters:
1. How to Diagnose and Control Personnel Turnover. New York: BFS Executive Communications, 1967, 32 pp.

(publications cont.)

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2."Personnel Turnover," in L.E. Abt & B.F. Riess (Eds.), Progress in Clinical Psychology: Clinical Psychology in Industrial Organization. IX, pp. 69-90, New York: Grune & Stratton, 1971.
3.Job Attitudes of Police. National Institute of Law Enforcement and Criminal Justice, August, 1971, 169 pp.
4."Attitudes of Police Toward Their Job," in J.R. Snibbe & H.M. Snibbe (Eds.), The Urban Policeman in Transition. Charles C. Thomas,

Articles:
5. Image of Industrial Psychology Among Corporate Executives. American Psychologist, 1962, 17(2), 109-111. (With M.R. Feinberg).
6. Self-Esteem of Industrial Workers. Journal of Applied Psychology, 1967, 51(6), 521-528.
7. Validity of Exit Interviews. Personnel Psychology, 1969, 22(4), 445-455. (With M.L. Katz).
8. Effect of Training on the Productivity and Tenure of Sewing Machine Operators. Journal of Applied Psychology, 1970, 54(1), 81-86.
9. Evalution of a Supervisory Training Program for Police Sergeants. Personnel Psychology, 1972, 25, 95 - 106.
10. Differential Validity: Ethnic Group as a Moderator in Predicting Tenure. Personnel Psychology, 1972, 25, 223 - 240.
11. Differential Validity: Ethnic Group as a Moderator in Predicting Job Performance. Personnel Psychology, 1974, 27, 209-223. (with H. Fox).
12. Job Attitudes of Police: Overall Description and Demographic correlates. Journal of Vocational Behavior, 1974, 5, 221-230.
13. Development of A Biographical Inventory Blank to Predict Faking on Personality Tests. Journal of Applied Psychology, 1974, 59, 404. (with ...
14. ~~Behavioral Science and the~~ Police Psychological Attitudes: A Review of Research and Opinion. Journal of Social Issues, 1975, ~~(in press)~~ 31(1), 3-26.
15. Some Answers to "Some Questions about 'Differential Validity: Ethnic Group as a moderator in Predicting Job Performance.'" Personnel Psychology, 1975, ~~(in press)~~ (with H. Fox), 28(3), 345-349

BERNARD M. BARUCH COLLEGE

INSTRUCTIONAL STAFF RECOMMENDATION FORM

NAME FINKELMAN, JAY M. DATE October 1974

DEPARTMENT PSYCHOLOGY Date of Birth 11/3/45 Soc. Sec. Number 079-36-9321 U.S. Citizen? Yes ☒ No ☐

RECOMMENDED ACTION:

☒ APPOINTMENT TO RANK OF ASSOCIATE PROFESSOR SALARY $ _____

☐ New Line ☐ Replacement ☐ Transfer

☐ REAPPOINTMENT IN RANK OF _____ SALARY $ _____
(SAME RANK)

☐ REAPPOINTMENT WITH PROMOTION

FROM RANK OF _____ SALARY $ _____

TO RANK OF _____ SALARY $ _____

CONDITIONS OF RECOMMENDED ACTION:

EFFECTIVE DATES: FROM 9/1/75 TO _____

DOES RECOMMENDED APPOINTMENT CONFER TENURE?* Yes ☒ No ☐

DOES RECOMMENDED APPOINTMENT CONFER C.C.E.?* Yes ☐ No ☐

(*Including service credit elsewhere in CUNY)

RELATED INFORMATION:

☒ PROJECTED TENURE DATE (PROFESSORIAL RANKS) 9/1/75

☐ PROJECTED C.C.E. DATE (LECTURER RANK) _____

☐ PROJECTED TIME LIMIT DATE (INSTRUCTOR RANK, LECTURER PART-TIME) _____

1. EDUCATION:

Degree	Institution	Date
B.A.	Brooklyn College	1966
M.B.A.	The City College-Baruch	1968
Ph.D.	New York University	1970

Professional License The University of the State of N.Y.- State Education Dept., 1972.

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2. FULL TIME ACADEMIC EXPERIENCE:

Institute	Rank	Department	Dates
Baruch College	Lecturer	Psychology	2/1/68 - 8/31/70
Baruch College	Assistant Professor	Psychology	9/1/70 - 12/31/73
Baruch College	Associate Professor	Psychology	1/1/74 - Present

3. PART-TIME ACADEMIC EXPERIENCE:

Institute	Rank	Department	Dates
Baruch College	Graduate Teaching Assistant	Psychology	9/1/66 - 1/31/68

4. OTHER EXPERIENCE:

Place of Employment	Title	Dates
New York State Education Department	Testing Assistant	1967 - 1968

Assistant to Dr. M. Z. Safian, in psychological testing geared to evolve vocational objectives and/or therapeutic programs for clients of rehabilitation counselors.

C.U.N.Y. College Discovery Program	Research Assistant	1967 - 1968

Assistant in the Research and Evaluation Unit

B.F.S. Psychological Associates	Psychological Consultant	1967 - Present

Rendered psychological services to a wide variety of organizations.

New York City Board of Education	Psychological Testing Consultant	1970

Conducted training in psychometrics for the Educational Directors of the Regional Opportunity Center and evaluated testing program.

New Jersey State Police	Training Consultant	1972 - Present

Conducted a variety of training programs for the New Jersey Chiefs of Police and State Police.

6. PUBLICATIONS:

(a) Books

Psychological Testing and Equal Employment: A Guide to Legal Personnel Practice. New York: B.F.S. Psychological Associates, 1974, in press. (approx. 150 pp.)

Industrial and Organizational Psychology Textbook: Problems in Industrial and Organizational Psychology (in progress) New York: Pergamon Press; expected to be completed in 1974.

Environmental Psychology Textbook: Perspectives in Environmental Psychology. Englewood Cliffs, N.J.: Prentice-Hall; publication projected for 1975 (approx. 500 pp.) Contract with publisher.

Chapters in Books

Industrial and Organizational Psychology chapter in B. Wolman (Editor), Handbook of Psychology. Englewood Cliffs, N.J.: Prentice Hall, 1973. (With Professor B. Balinsky)

Personnel Psychology, Chapter in B. Wolman, Introduction to Psychology. Englewood Cliffs, N.J.: Prentice-Hall. (in press).

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PUBLICATIONS (continued)

(b) Articles in Scholarly Journals

A reappraisal of the Relationship Between Noise and Human Performance by Means of a Subsidiary Task Measure. Journal of Applied Psychology, 1970, 54, 211-213. (with Prof. D. Glass)

Measurement of Operator Loading in Pursuit Rotor Tracking by a "Random Digit" Generation Subsidiary Task. Davidson Laboratory Reports, No. 1401, August 1969, Stevens Institute of Technology, Hoboken, N.J., (H.E.W. Research Grant No. 5 Rol UT 00031-01/02/03) (with Prof. L. Zeitlin)

Subsidiary Task Measures of Operator Loading in Vehicle Control. Paper presented and published in Proceedings of the 13th Annual Meeting of the Human Factors Society, 1969. (with Prof. L. Zeitlin)

A Comparative Evaluation of the Subsidiary Task Techniques of "Random Digit Generation" and "Delayed Digit Recall" as Measures of Loading in Man-Machine Systems. Paper presented and published in Proceedings of the 15th Annual Meeting of the Human Factors Society, 1971. (with Prof. L. Zeitlin)

An Information Processing Evaluation of the Effect of Environmental Noise Upon Human Performance. Paper presented and published in Proceedings of the 15th Annual Meeting of the Human Factors Society, 1971.

An Information Processing Evaluation of the Effect of Stress. Paper presented and published in Colloquium Proceedings of the International Congress of the Institute for Accident Research, 1972. (approx. 19 pp.)

Subsidiary Task Measurement in Perspective. Paper presented and published in Proceedings of the 17th Annual Meeting of the Human Factors Society, 1973.

A Subsidiary Task Evaluation of the Information Processing Load in a Vehicular Control Simulation. American Psychological Association Experimental Publication System, December 1969, 3, Ms. No. 106B, approx. 6 pp. (with Prof. L. Zeitlin)

A "Random Digit" Generation Subsidiary Task Measure of Operator Perceptual Motor Loading. American Psychological Association Experimental Publication System, September 1969, 1, Ms. N. 035B, approx. 12 pp. (with Prof. L. Zeitlin)

Comparison of "Random Digit Generation" and "Delayed Digit Recall" as Subsidiary Task Measures of Operator Loading in Man-Machine Systems. American Psychological Association Experimental Publication System, June 1971, 12 Ms. No. 458-12, approx. 7 pp. (with Prof. L. Zeitlin)

PUBLICATIONS (continued)

A New Method for Estimating Operator Loading Under High Level Noise. Journal of the Acoustical Society of America, in press. (with Prof. L. Zeitlin)

An Information Processing Approach to Subsidiary Task Measures of Operator Stress in Man-Machine Systems. Human Factors, 1974, 16, in press. (with Prof. L. Zeitlin)

Environmental Noise, Information Processing, and Human Performance. Sound and Vibration, 1974, 8, in press. (approx. 16 pp.)

Urban Lighting by Franchise-pro and con. Lighting Design and Application, 1974, 4 (7), (with H. Brandston and M. Durrell)

Design Deficiencies in High Speed Vehicle Illumination Systems. Lighting Design and Application, 1975, 5, in press. (with H. Brandston)

Urban Experience and Achievement Behavior. Paper presented and published in Proceedings of the 82nd Annual Convention of the American Psychological Association, 1974. (with Prof. A. Korman)

Police Training Strategies: A Contingency Model. Journal of Police Science and Administration, 1974, in press. (with Prof. W. Reichman)

Articles Submitted for Publication Pursuant to Research Grants

Evaluation of a Serial Dependent Three Stage Limited Channel Capacity Model of the Central Information Processing Mechanism. Journal of Experimental Psychology. (Based upon research performed under a 1971-72 research grant from the Research Foundation of the City University of New York, approx. 22 pp.)

The Application of a Dual Task Measurement Strategy to the Evaluation of an Human Information Processing Model. Journal of Experimental Psychology. (Based upon research performed under a 197 -72 research grant from the Research Foundation of the City University of N.Y., approx. 17 pp.)

The Effect of Intermittent Noise on Automobile Handling and Control. Human Factors. (Based upon research performed under a 1972-73 research grant from the Research Foundation of the City University of N.Y., approx. 13 pp.)

(c) Professional Papers

Leaders: Selected or Developed? Presented to the American Society of Personnel Administrators, New York City, April 1969.

An Information Processing Approach to Unobtrusive Measurement. Paper presented at the annual meeting of the New York State Psychological Association, New York City, May 1971.

Psycho-ecological Factors in School Failures. Panelist and reporter of the workshop at the annual meeting of the American Orthopsychiatric Association, Washington, D.C., March 1971.

Space Technology - A Model for Safety Techniques and Accident Prevention? Chaired Colloquium and presented paper at the Institute for Accident Research (Institut fur Unfallforschung), Congress Center, Cologne Fair, Cologne, Germany, April 24-27, 1972.

The Measurement of Stress in Automobile Driving. Paper presented to the Human Factors Society, New York City, June 1973. (with Prof. L. Zeitlin)

The Computer Simulation of Automobile Driving. Paper presented to the Human Factors Society, New York City, June 1973. (with Prof. L. Zeitlin)

Psychological Consequences of the Urban Environment. Paper presented at the First Annual Urban Environmental Education Conference, New York City, May 1973, and to be published in conference proceedings.

The Academic Environment: Faculty Satisfaction and Behavior as a Function of the Physical Environment. Paper presented to the Annual Symposium Technical Program of the Human Factors Society, New York City, November 1973.

Electronic Control and Surveillance Technology. Panelist at the Workshop at the annual meeting of the American Orthopsychiatric Association, San Francisco, April 1974.

(d) Monographs and Professional Research Reports

A Multiplicative Model for the Prediction of Personal and Organizational Change Following Sensitivity Training. Unpublished manuscript, New York University, 1969. (approx. 70 pp.)

Development of Practical Methods of Measuring Information Processing Load in Perceptual-Motor Tasks. Research Report pursuant to City University of New York - Research Foundation 1971-72 Faculty Research Award Grant (with Prof. L. Zeitlin)

Noise as a Means of Optimizing Human Information Processing Load. Research Report pursuant to City University of New York - Research Foundation 1972-73 Faculty Research Award Grant. (with Prof. L. Zeitlin)

Intellectual Determinants of Human Channel Capacity. Research in progress pursuant to City University of New York - Research Foundation 1973-74 Faculty Research Award Grant. (with Prof. L. Zeitlin)

Predictive Validity Study for the Selection of Newspaper Salespersons Research Report for the GRIT Publishing Company of Williamsport, Pennsylvania, 1974.

Job Attitude Survey of Paper Box Company Employees. Research Report for Robertson Paper Box Company of Montville, Connecticut, 1974.

(e) Other Publications

Preliminary Analysis of the Systematic Student Course and Faculty Evaluation Program. Baruch Today, April 9, 1973 - Special Issue, approx. 3 pp. (with Prof. E. Wolf)

7. MEMBERSHIP IN LEARNED SOCIETIES:

1966 American Psychological Association
1966 American Sociological Association
1967 Metro Chapter, H.F.S.
1968 American Association for the Advancement of Science
1969 Human Factors Society
1970 Metropolitan New York Association for Applied Psychology
1972 New York State Psychological Association
1972 Accident Research Committee, A.P.A., National Safety Council

8. ACADEMIC AND PROFESSIONAL HONORS:

1966	President, Delta Sigma Rho-Tau Kappa Alpha, National Honorary Forensic and Public Speaking Society (Brooklyn College Chapter).
1966	Graduation Cum Laude (Brooklyn College)
1966	Recipient, All College Award (Brooklyn College)
1967	Election to Psi Chi, National Honor Society in Psychology (The City College-Baruch School Chapter)
1969	Election to Beta Gamma Sigma, National Honorary Fraternity of the American Association of Collegiate Schools of Business (Epsilon of New York Chapter).
1971	Recipient, Founders Day Award (New York University)
1972	Certification as Psychologist, New York State
1971-72	Faculty Research Award, The City University of New York
1972-73	Faculty Research Award, The City University of New York
1973-74	Faculty Research Award, The City University of New York
1974-75	Faculty Research Award, The City University of New York
1973	Listed in American Men and Women of Science
1973	Election to Sigma Alpha, National Honor Service Society (Alpha Chapter)
1974	Election to Doctoral Faculty, Ph.D. Program in Business
1974	Excellence in Teaching Award, The City University of New York

9. OTHER EVIDENCE OF SCHOLARSHIP AND ACADEMIC OR PUBLIC SERVICE:

Guest Psychologist on the Barry Farber Show, "The Feminist Movement and the Image of Woman," WOR Radio, September 1970.

Guest Panelist on The World of Business, "Pollution," WEVD Radio, October 1970.

Guest Panelist on The World of Business, "Pollution," (Follow-up) WEVD Radio, December 1971.

Speaker on "Effective Police Administration" and "Facilitating Organizational Change" to the New Jersey Chiefs of Police, 1972, 1973, 1974.

Speaker on "Enhancing Corporate Communication" to the New York Association of Industrial Communicators, 1973.

Volunteer Consultant to New York City Urban Corps (M.A.S.H. Program), 1973.

Volunteer Consultant and Research Fellow (Transportation) to the Council on Municipal Performance, 1973.

STEVENS INSTITUTE OF TECHNOLOGY

HOBOKEN, NEW JERSEY
07030

LABORATORY OF PSYCHOLOGICAL STUDIES

Richard S. Barrett, Ph.D.
Director
Jay I. Gottesman, Ph.D.
Manager, Industrial Services
H. Karl Springob, Ph.D.
Manager, Counseling Services

(201) 792-2700
(212) 732-0237

November 24, 1975

Mr. David Raff
Employment Law Clinic
49-51 Chambers Street
Suite 220
New York, New York 10007

Dear Mr. Raff,

Following is the rationale and some of the data used in the development of the new version of the F.D.R. (Follow Directions Reading Test) submitted and proposed for administration to the Sheetmetal Apprentice Applicant group to be tested on December 13, 1975.

In face of the wording of the court order and the objections raised in relation to the determination of the qualifying score for the BAAT, I have requested that the F.D.R. be administered after the Mechanical Comprehension Test and retained for future use with a predictive validity study.

An experimental version of the F.D.R. was administered to the apprentice group in the longitudinal study at the same time as the criteria tests, i.e. as a part of a concurrent validation approach. The experimental form correlated positively and significantly with the total project criterion for the Total Group (N=78). Nevertheless the recommendations at the completion of the study (see page 5 enclosed) proposed the development of a new test form and the establishment of a minimum apprentice level entry requirement based on a sampling of materials in use.

Between the initial administration of the experimental F.D.R. and the present, a great deal of work has gone into the development of the new F.D.R. From a 200 item format, and based on data from administration to several hundred blue collar workers, including Steamfitter Apprentices, the current 100 item test has emerged, based on detailed item analysis studies. Importantly, the current F.D.R. version was positively and significantly

correlated with a work sample criterion for prediction of success as an Equipment Operator and is currently in use by the Public Service Electric and Gas Company of New Jersey.

I am enclosing herewith tables of our findings with regard to the extensive examination of various parameters of readiability against various criteria using the F.D.R. You will note that among the most useful predictors are; total number of words per item, total number of sentences per item and the percent of non-Dale words. In effect then, the Dale-Chall formula emerges as the best predictor of the criteria. You will of course recall that each item in the new test was rated using this self same Dale-Chall formula, and further, that the reading samples collected in the field were analyzed using the same Dale-Chall Formula. The table of reading sample analysis is enclosed. It was on the basis of these findings that we recommended a 6th grade reading level cut-off.

Now to the crux of the matter -

a. It is obviously impossible to perform a predictive validity study for a test which has not yet been administered for a job not yet filled, by unknown individuals who cannot be rated or measured for their on-job performance. Hence we cannot comply with the literal content of the court order.

b. Although I believe we have made a very reasonable case for the content validity of the proposed F.D.R. to be used as a qualifying hurdle, the attorneys have volubly objected to the inclusion of a "hurdle" test unless we can "validate" the cut-off score. This of course requires a predictive validity study which cannot be done (see a. above)

c. We are left then with what appears to be a resonable request that we be permitted to administer the revised F.D.R., which we believe may be positively and significantly related to ultimate on-the-job performance. We will not use the results for apprentice selection, but will administer it subsequent to and apart from the Mechanical Comprehension Test.

d. I am convinced that every party to this action intends that the ultimate selection procedure be a valid and fair method for selection of apprentices. To miss an opportunity to administer a test with such apparent promise would not appear to me, to be in keeping with the spirit and intent of the Equal Employment Laws, particularly since it cannot influence, for better or for worse, anyone's chances of being selected.

e. I therefore request that all parties review this letter and the enclosed materials and consider giving their approval for administration of the Follow Directions Reading Test under the

terms and conditions stated herein.

Respectfully submitted,

Jay Gottesman, Ph.D.
Consulting Psychologist

Encl: Results of Randomly Selected
Reading Samples Analysis
Predictive Validity of the BMCT,
FDR and BAAT Tests
An Empirical Look at Readability
Parameters
Dale-Chall Values of FDR items(under separate cover)

RESULTS OF RANDOMLY SELECTED READING SAMPLES ANALYSIS

USING DALE-CHALL FORMULA - SHEET METAL

INDEX	SAMPLES #1	#2	#3	#4	#5	#6	#7	#8
1. No. of words in sample	140	99	83	99	111	112	113	110
2. No. of sentences in sample	9	3	6	4	7	8	7	4
3. No. of words not on Dale List	15	8	20	18	22	9	13	25
4. Ave. Sentence length (1)÷(2)	15.56	33	13.83	24.75	15.86	14.0	16.14	27.5
5. Non-Dale words percent (3)÷ (1) x 100	10.71	8.08	24.10	18.18	19.82	8.04	11.50	22.73
6. (4) x .0496	.77	1.64	.69	1.23	.79	.69	.79	1.36
7. (5) x .1579	1.69	1.28	3.80	2.87	3.13	1.27	1.82	3.59
8. Constant= 3.6365	3.64	3.64	3.64	3.64	3.64	3.64	3.64	3.64
(6) + (7) + (8) = Dale Grade	6.1	6.56	8.13	7.74	7.56	5.6	6.25	8.59

601668

Predictive Validity of the BMCT, FDR and BAAT Tests for the Composite Weighted Work Samples Criteria For Station Mechanics & Equipment Operators.

STATION MECHANIC

BMCT with weighted Composite Criterion=+.6404**
BAAT with weighted Composite Criterion=+.3379*
FDR with weighted Composite Criterion=+.4860**

EQUIPMENT OPERATOR

BMCT with weighted Composite Criterion=+.3896*
BAAT with weighted Composite Criterion=+.5007**
FDR with weighted Composite Criterion=+.5127**

** Sig at .01
* Sig at .05

READABILITY - THE FINAL LOOK...

CRITERIA - % getting this item wrong

(1)

* Lowest Values NOT Highest

An Empirical Look At READABILITY PARAMETERS

PARAMETERS

P 1. Total # of words per item
P 2. Total # of letters per item
P 3. Total # of sentences per item
P 4. Avg. # of words per sentence
P 5. Variance of Avg. # of words per sentence
P 6. Avg. # of letters per sentence
P 7. Variance of Avg. # of letters per sentence
P 8. Total # of syllables for the item
P 9. Avg. # of syllables per sentence
P 10. Avg. # of syllables per word
P 11. % Non-Dale words
P 12. % one syllable words
P 13. % two syllable words
P 14. % three or more syllable words
P 15. Avg. # of letters per word
P 16. # of syllables per 100 words

> DISCUSSION OF SAMPLE SELECTION IS 100 words

B1. Avg. Brown Actual Frequency
B2. Variance of avg. Brown actual frequency
B3.* Highest value of Brown actual frequency
B4. Avg. Brown Dispersion Index
B5. Variance of avg. Brown dispersion index
B6.* Highest value of Brown dispersion index
B7. Avg. Brown # of Samples
B8. Variance of avg. Brown # of samples
B9.* Highest value of Brown # of samples

E1. Avg. ETS-F
E2. Variance of avg. ETS-F
E3.* Highest value of ETS-F
E4. Avg. ETS-D
E5. Variance of avg. ETS-D
E6.* Highest value of ETS-D
E7. Avg. ETS-U
E8. Variance of avg. ETS-U
E9.* Highest value of ETS-U
E10. Avg. ETS-SFI
E11. Variance of avg. ETS-SFI
E12.* Highest value of ETS-SFI

CRITERIA

C1 Rights
C2 Wrongs
C3 Omits
C4 Wrongs Omits
C5 $\frac{W}{R+W}$

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Results of Regression Analysis
Readability

CRITERIA

	C1 RIGHTS	C2 WRONGS	C3 OMITS	C4 WRONGS + OMITS	C5 W (2+W)
P: Predictors listed in the order they entered the regression (to the point where the standard error began to increase)	(E5)	(P1)	P11	(-E5)	(P1)
	-P11	P7	P7	P11	(-P3)
	(-P1)	B3	-P5	(P1)	(-E5)
	(P3)	P11	P16	(-P3)	P12
	P16	(P3)	(-E5)	-P16	B5
	-B8	B5	E2	B8	-E11
	-B3	(E5)	E9	B3	$\bar{R}$=.572
	-B5	$\bar{R}$=.54	B8	B5	
	-B4		B4	B4	
	$\bar{R}$=.704		-B6	$\bar{R}$=.704	
			(-P3)		
			P2		
			-E4		
			E6		
			P12		
			B7		
			(-P1)		
			-P15		
			-P8		
			-E7		
			E12		
			P4		
			$\bar{R}$=.795		

- C1 & C4 are redundant
- P10 & P16 are redundant
- best predictors (P1) (P3) (E5)

C4 dropped (wrongs + omits) (3)

Correlation Matrix
Readability Analysis

Predictors \ Criteria	C1	C2	C3	C5	# of Entries
P1	X	X	X	X	4
P2			X		1
P3	X	X	X	X	4
P4			X		1
P5			X		1
P6					0
P7		X	X		2
P8			X		1
P9					0
P10					0
P11	X	X	X		3
P12			X	X	2
P13					0
P14					0
P15			X		1
P16	X		X		2
B1					0
B2					0
B3	X	X			2
B4	X		X		2
B5	X	X		X	3
B6			X		1
B7			X		1
B8	X		X		2
B9					0
E1					0
E2			X		1
E3					0
E4			X		1
E5	X	X	X	X	4
E6			X		1
E7			X		1
E8					0
E9			X		1
E10					0
E11				X	1
E12			X		1

X = entered regression

BEST PREDICTORS	Good Predictors	OK	Some	Nothing
P1 ✓	P11 ✓	P7 B8	P2 B7	P6 B2
	P5	P12	P4 E2	P9 B9
			P5 E4	P10 E1

00196

ROSENTHAL & GOLDHABER
COUNSELORS AT LAW
44 COURT STREET
BROOKLYN, N.Y. 11201

(212) 237-9559

BENJAMIN ROSENTHAL (1905-1969)
MAX M. GOLDHABER
RICHARD F. GOLDHABER
WILLIAM ROTHBERG
ARTHUR M. GABOR

LONG ISLAND OFFICE
150 BROAD HOLLOW ROAD
MELVILLE, N.Y. 11746
(516) 421-2468

November 14, 1975

COPY

David Raff, Esq.
49-51 Chambers Street
New York, New York 10007

Dear Mr. Raff:

On behalf of the Joint Apprenticeship Committee, request is hereby made to have apprentice applicants take a read and follow directions test on December 13, 1975.

We wish to give this test for the purpose of validation. We will not use it as part of the selection procedure.

Sincerely yours,

ph

William Rothberg

c.c. Sol Bogen, Esq.
Beverly Gross, Esq.
Taggart Adams, Esq.
Dominick Tuminaro, Esq.

STATE OF NEW YORK
DEPARTMENT OF LAW
TWO WORLD TRADE CENTER
NEW YORK, N.Y. 10047
TELEPHONE: 488-7412

LOUIS J. LEFKOWITZ
ATTORNEY GENERAL

GEORGE D. ZUCKERMAN
ASSISTANT ATTORNEY GENERAL
IN CHARGE OF CIVIL RIGHTS BUREAU

November 13, 1975

David Raff, Esq.
49-51 Chambers Street
Suite 220
New York, N.Y. 10007

Dear Mr. Raff:

This is to express my concern over the Follow Directions Test (FDR) proposed for use by the JAC for the exam of December 13, 1975. I am particularly dismayed that Dr. Gottesman, who is not unaware of the issues which were in contention in this litigation respecting test validity and of the Court's order respecting validation, chose not to provide more than mere assertions respecting the validity of his proposed test instrument.

Dr. Gottesman's letter of November 7, 1975 raises more questions than it answers--what is validity and how was it determined respecting cut-off scores, time alloted for tests, and whether his development and purported validation procedures taken as a whole comport with the EEOC guidelines as the Court has ordered.

It would be ill-advised at this late stage in the proceedings to allow this test to go forward on little more than the scant assurance provided by Dr. Gottesman in his letter.

Very truly yours,

LOUIS J. LEFKOWITZ
Attorney General
By Dominick J. Tuminaro
DOMINICK J. TUMINARO
Assistant Attorney General

DJT:pw
cc:
Taggart Adams, Esq.
Beverly Gross, Esq.
Sol Bogen, Esq.
William Rothberg, Esq.

001674

Baruch College
The City University of New York
17 Lexington Avenue
New York
N.Y. 10010

Department of Psychology

November 12, 1975

Mrs. Beverly Gross, Esq.
New York City Law Department
Municipal Building
New York, N.Y. 10007

Dear Mrs. Gross:

In response to your request of November 10, 1975 we have read the "Follow Direction Reading Test" (Version Two) by English, Struk and Gottesman and the covering letter by Dr. Gottesman to Mr. Rothberg, of November 7, 1975.

It is our best professional judgment that insufficient information has been presented to attest to the instrument's validity or lack thereof. In point of fact, no data have been presented that directly address the test's validity.

In the absence of such data, we find no evidence that the test's creators have met their obligation to establish its validity in accord with the guidelines of the American Psychological Association or the Equal Employment Opportunity Commission.

Quite clearly, the letter by Dr. Gottesman, referred to above, does not constitute "a copy of a report demonstrating the validity of each component of the apprentice entrance test to be administered" (Court Order, August 28, 1975, p. 12).

Very truly yours,

Jay M. Finkelman, Ph.D
Associate Professor
Certified Psychologist
New York State

Joel Lefkowitz, Ph.D
Associate Professor
Certified Psychologist
New York State

/ek

001675

STEVENS INSTITUTE OF TECHNOLOGY

HOBOKEN, NEW JERSEY
07030

LABORATORY OF PSYCHOLOGICAL STUDIES

Richard S. Barrett, Ph.D.
Director
Jay I. Gottesman, Ph.D.
Manager, Industrial Services
H. Karl Springob, Ph.D.
Manager, Counseling Services

(201) 792-2700
(212) 732-8237

November 7, 1975

William Rothberg, Esq.
c/o Rosenthal & Goldhaber
Counselors at Law
Brooklyn, New York 11201

Dear Bill,

Per your request, I enclose herewith a copy of the Follow Directions Reading Test (FDR) proposed for use in the Sheet-metal Apprentice Examination of December 13, 1975. Of course I will arrange to have it printed and bound and suitable answer sheets prepared as soon as I get the figures on probable number of apprentices to be tested.

The bases for the recommended inclusion of the F.D.R. are multiple. You will recall that our longitudinal validation study of May 1974, which was placed in evidence, showed a significant positive correlation between the test and project total, for the total group. Moreover Judge Werker's decision calls for the administration of "a read and follow directions test to be developed professionally and validated in accordance with EEOC Guidelines".

The attached version of FDR test is based on data developed from administration to blue collar mechanics at the Public Service Electric and Gas Company of New Jersey as well as on Steamfitter Apprentices. Item difficulty was established by the objective measurement of each item in accordance with the most authoritative formula available.

Samples of written materials used by Sheetmetal apprentices were collected from the training school, from five representative sheetmetal shops and from several field work sites covering new construction, alterations and special applications. The collected materials were analyzed in accordance with the "Dale-Chall Formula" as published in the Educational Research Bulletin of February 18, 1948. This formula is the most accurate and widely accepted in professional circles. It is based on

random measures of reading samples, incorporating word count, sentence length and word familiarity-unfamiliarity tables developed by determining the words known to 80 percent of a fourth grade sample. It results in a grade level determination.

The samples analyzed (excluding technical terms which can be taught and learned on the job) produced adjusted reading level requirement at the 6th grade of elementary school. Accordingly, based on these findings, we recommend that an applicant who cannot read at the level of sixth grade be rated as disqualified for Sheetmetal Apprenticeship since we have demonstrated a valid content requirement for reading skills at that level!

Very truly yours,

Jay Gottesman Ph.D

Jay Gottesman
Senior Consulting Industrial
Psychologist, Manager,
Industrial Services

JG/dl

PROPOSED INTRODUCTORY STATEMENT
FOR APPRENTICE TEST

This test battery is being administered at the direction of Judge Werker of the U.S. District Court. There has been a change in the plan from the information given to many of you on Monday, December 8th, 1975. The test battery consists of a mechanical comprehension test, a test of applied science and mechanics, a test of basic arithmetic and two (2) short tests of spatial relations. Please understand that some of the tests will be used in the selection but not all will be used. You are strongly advised to do your best on all of the tests. There will be no penalty for guessing, therefore answer all questions.

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HOBOKEN, NEW JERSEY
07030

LABORATORY OF PSYCHOLOGICAL STUDIES

(201) 792-2700
(212) 732-8237

Richard S. Barrett, Ph.D.
Director
Jay I. Gottesman, Ph.D.
Manager, Industrial Services
H. Karl Springob, Ph.D.
Manager, Counseling Services

January 14, 1976

Mr. William Rothberg, Esq.
c/o Rosenthal & Goldhaber
44 Court Street
Brooklyn, New York 11201

Dear Bill,

Per our telephone conversation, please note the attached, corrected "Additional Statistics" replacing the sheet transmitted to you earlier this week. Please note the Total Group Median Score on the combined tests was incorrectly transmitted, the corrected figure should be 84.719 (instead of 82).

To clarify the attached transmittal please recall that two (2) mechanical comprehension tests were administered and the combined total score (based on the number of correct answers) was used as the basis for ordering the applicants. Further, two listings were prepared, at the Court's direction. One listing consists of those minority applicants who identified themselves either as Black or as Spanish-surnamed. The second list includes all other applicants in the total group.

The attached data sheet indicates the means, standard deviations and median scores for three groups (minority, non-minority and total group) on each of the two mechanical comprehension tests and on the two combined mechanical comprehension tests. The two lists, from which placements are to be made, are based on the combined test scores of the two mechanical tests for minority applicants and non-minority applicants.

If any additional information is required please contact me.

Very truly yours,

Jay Gottesman, Ph.D.

Jay Gottesman, Ph.D.
Manager, Industrial Services

JG/dl

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HOBOKEN, NEW JERSEY
07030

LABORATORY OF PSYCHOLOGICAL STUDIES

(201) 792-2700
(212) 732-8237

Richard S. Barrett, Ph.D.
Director
Jay I. Gottesman, Ph.D.
Manager, Industrial Services
H. Karl Springob, Ph.D.
Manager, Counseling Services

SHEET METAL APPRENTICE TESTING OF 12/13/75.

ADDITIONAL STATISTICS CORRECTED 1/14/76

MINORITY

TEST:	MEAN	MEDIAN	STANDARD DEVIATION
Mech Comp #1	37.085	37.476	7.021
Mech Comp #2	45.399	44.531	9.279
*Total (N=351)	82.484	81.778	14.945

NON-MINORITY

TEST:	MEAN	MEDIAN	STANDARD DEVIATION
Mech Comp #1	39.738	40.143	6.169
Mech Comp #2	49.495	48.600	10.116
*Total (N=210)	89.233	89.833	14.420

TOTAL GROUP (MINORITY + NON-MINORITY)

TEST:	MEAN	MEDIAN	STANDARD DEVIATION
Mech Comp #1	38.078	38.683	6.831
Mech Comp #2	46.932	45.981	9.795
*Total (N=561)	85.011	84.719	15.096

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*TOTAL = Mech Comp #1 + Mech Comp #2 (Total # correct answers)

The City of New York

LAW DEPARTMENT
MUNICIPAL BUILDING
NEW YORK, N. Y. 10007

W. BERNARD RICHLAND,
Corporation Counsel

February 27, 1976

Mr. David Neff
49-51 Chambers Street
New York, New York 10007

Dear Mr. Neff:

I am sending to you a letter from Drs. Joel Lefkowitz and Jay M. Finkelman in which they comment on Dr. Gottesman's proposed methods for validating the October 11, 1975 journeyman test and for developing a new journeyman test.

Drs. Lefkowitz and Finkelman, while in substantial accord with Dr. Gottesman's validation methods, pose some questions as to certain of the contemplated procedures. Additionally, there are some apparently real differences as to the development of a properly validated new journeyman test.

To avoid inconvinience of the kind suffered in the past, we ask that Dr. Gottesman be directed to address himself to these issues and provide the City with his written response.

Very truly yours,

Ellen Kramer Sawyer
Assistant Corporation Counsel

cc: Sol Rogen, Esq.
One Penn Plaza
New York, New York 10001

Thomas J. Cahill
United States Attorney
1 St. Andrew's Plaza
New York, New York 10007
Attn: Taggart D. Adams

Rosenthal & Goldhaber
44 Court Street
Brooklyn, New York
Attn: William Rothberg

Louis Lefkowitz
Attorney General
New York State
2 World Trade Center
New York, New York
Attn: Dominick Tumbarello

BFS PSYCHOLOGICAL ASSOCIATES, INC.
666 FIFTH AVENUE, NEW YORK, NEW YORK 10019 • TELEPHONE: 212 765-7220

February 24, 1976

Ms. Ellen Sawyer
Office of the Corporation Counsel
New York City Law Department
Municipal Building
New York, N.Y. 10007

Dear Ms. Sawyer:

We have read the proposal from Dr. Gottesman to Mr. Stack (Jan. 14, 1976) concerning the validation of the existing journeyman test and development of a new journeyman test. Our opinion is that, in general, their plan seems reasonable and also to be in accord with accepted standards of professional practice. However, you realize that this comment refers to a proposal written in general terms and cannot, therefore, apply to specific procedur s that have not been detailed operationally. Moreover, we do have a few questions that may serve to help clarify important areas that seem particularly ambiguous at this (planning) stage.

At this point, we will comment on the specific points dealt with in Dr. Gottesman's letter:

P. 1 to top p. 2 = Rationale seems "O.K."
Step 1 = O.K.
Step 2 = First part O.K.
Don't understand the necessity for specifying (emphasizing?) reading and arithmetic requirements over and above the overall task analysis to be done.

Page 3 = O.K.
Page 4 = Important question remains unspecified as to how the "appropriate passing score" is to be determined.
a) Is it to be an average score or the minimum score obtained by these current journeymen?

If it refers to the minimum score level of current performance, the size of the sample(s) becomes especially crucial.

b) Are there to be separate "passing scores" for each ethnic group if the score distributions indicate such?

c) There is no indication of intent to collect relevant job proficiency and tenure data on the current journeyman sample in order to relate these to their test score(s). This ought to be done in order to estimate the job relatedness of the test(s) and the extent to which test performance skills may be acquired on the job. (Accordingly, larger sample sizes ought to be used.)

Step 5 = O.K.

Step 6 = O.K.

Step 7 = Same comments as for Step 4.

Step 8 = At this point in the project, it is our opinion that the test(s) are not ready for operational use. There seems to be some confusion between the stage of test development and test validation.

There is a need for a large sample try-out to check on possible sampling difficulties.

Validation against some external job proficiency measure(s) seems warranted in light of "varied --- many specialized" nature of the job, for which only a "representative" work sample test shall exist. There does not appear to be any reason why one should not attempt to assess how "representative" the test(s) are.

This sort of validation with applicants also seems warranted insofar as the procedures outlined provide no information with respect to the likelihood of journeymen applicants scoring below the "cut-off" but nevertheless being able to perform the job.

Ms. Ellen Sawyer

February 24, 1976

All of the above comments (Steps 1 - 8) apply equally to the establishment and validation of any alternate equivalent forms.

We hope that these comments can help to provide maximum benefit to all parties concerned and to minimize ex post facto difficulties.

Regards,

Joel Lefkowitz, Ph.D.

Jay M. Finkelman, Ph.D.

JL:eq

STEVENS INSTITUTE OF TECHNOLOGY

HOBOKEN, NEW JERSEY
07030

LABORATORY OF PSYCHOLOGICAL STUDIES

Richard S. Barrett, Ph.D.
Director
Jay I. Gottesman, Ph.D.
Manager, Industrial Services
H. Karl Springob, Ph.D.
Manager, Counseling Services

(201) 792-2700
(212) 732-6237

January 14, 1976

Mr. Edward Stack
Business Manager
Sheet Metal Workers, Local 28
1790 Broadway
New York, New York 10019

Dear Mr. Stack,

Local 28 has been directed by a Court decision to prepare and administer validated tests to measure the qualifications of applicants to perform as journeymen sheet metal workers. On October 11, 1975 a "hands-on" practical examination was administered to a group of applicants with the approval of the Court appointed administrator, the plaintiffs, EEOC and the City of New York. As a consequence of the limited time availability, this work sample test, prepared by the Union's Examining Board, was not validated.

We have been asked to attempt to validate the journeymen test of October 11, 1975 and, further, to develop a new test for use with applicants seeking to be qualified as journeymen sheet metal workers.

Clearly in such circumstances the preferred, logical and obvious approach is to develop a content valid test. Since the applicants are representing themselves as qualified to perform in the trade at the journeyman level, the best possible test is a measure of the ability to do the job itself and the ability to perform satisfactorily on the job is the ultimate criterion cited in the EEO Guidelines.

Developing a content valid test for journeymen sheet metal workers entails several areas of concern:

First, the array of work performed by journeymen Sheet metal workers in Local 28 is quite varied and is determined by the work projects accepted by the employer-contractor who employs the journeyman. Second, to attempt to test applicants on all of the jobs to which a journeyman might be assigned in the trade or even to test in any detail for any one of the many specialized jobs, would be inordinately time consuming and expensive. Hence, a representative work sample

test is proposed. Third, a satisfactory level of performance (criteria) must be established and fourth, it is necessary only to establish a pass or fail level since no ranking is required in the situation.

The following steps are proposed for validation of the October 1975 test and for the development and validation of a new qualifying test for journeymen.

1. A comprehensive task analysis will be conducted. All of the various segments of the sheet metal trade will be covered using a combination of expert input followed by verification through in-field observation.

2. Based on the task data generated, those tasks which are common and basic to the various sheet metal specialties will be identified and their criticalness for successful performance in the trade established. Data previously collected in conjunction with apprentice test development for reading requirements and arithmetic computation requirements will be incorporated where appropriate.

3. Using expert assistance, the tasks included in the October 1975 journeyman's test will be identified and checked against the basic task list generated in steps 1 and 2. Proper weights will be determined and objective scoring standards developed and compared with the scoring procedures used in the recent journeyman's work sample test.

4. Three randomly selected samples of 20 each non-minority journeymen, black journeymen and Spanish surnamed journeymen, will be drawn from a listing of currently employed journeymen in the shops and on job sites throughout the industry. These journeymen will be asked to take the October 1975 journeyman's test anonymously, and their performance will be reviewed to establish an appropriate passing score for the work sample test.

5. The scores of the applicants who took the journeyman's test on October 11, 1975 will be reexamined in light of this passing score.

6. Based on the list of common, critical tasks generated in steps 1 and 2 above, a new work sample test will be developed and objective scoring methods developed.

7. Again, the random samples from 4 above will be asked to anonymously take the test and the passing score will be determined on the basis of the performance of these samples.

8. The resultant content valid, work-sample test will then be formally prepared and presented for future use as a journeyman's qualifying examination. Wherever possible alternate equivalent forms will be established to provide for increased security of the test procedures.

The cost for accomplishment of the above described project will be $6,000, plus travel expenses to be billed as incurred. The specific details for the payment of monies due are to be worked out between our controller and your treasurer. The estimated time for completion is four months from the starting date. If this general proposal is approved, a detailed work and time schedule will be developed to assure completion within prescribed time limits. This project will then be pursued in consonance with such time schedule.

Respectfully submitted

Jay Gottesman, Ph.D.
Senior Consulting, Industrial Psychologist, Manager
Industrial Services

Approved and Accepted
for Local 28

by _____
Signature

_____
Title

_____
Date

BFS PSYCHOLOGICAL ASSOCIATES, INC.
666 FIFTH AVENUE, NEW YORK, NEW YORK 10019 • TELEPHONE: 212 765-7220

March 30, 1976

Ms. Ellen K. Sawyer
Assistant Corporation Counsel
City of New York Law Dept.
Municipal Building
New York, N. Y. 10007

Dear Ms. Sawyer:

We have read the proposal submitted to the JAC by the Psychological Corporation for validation of the December 19, 1975 apprentice test.

There is really little of substance on which we can comment. All of the procedures are subsumed under phrases such as "The data attesting to such validity will be assembled in a manner congruent with the requirements of relevant federal agencies" (p. 5). It is apparent that our suggestion to you concerning the possibility of some substantive collaboration among the professionals prior to undergoing the time and expense of the validation procedure(s), thus reducing at least at that level the adversarial nature of the process, is not likely. In large measure, then, we are left only with the task of reacting after-the-fact to the validation study as performed. (We might add that the established reputation of the Psychological Corporation leads us to expect a study pertinent in all respects.)

We would like to note, however, that several observations made in our earlier correspondence to Mr. Raff and to Mrs. Gross still obtain. The glaring absence of any systematic job analysis procedures -- relating to the unfortunate inclusion of the "Read and follow Directions" Test -- and the continuing somewhat ambiguous state of the relevant job performance criteria to be "predicted."

It is clear that this (interim) validation study is to be concerned with the predictability of some short-term (presumably) training criteria.

We would call your attention to the point that the relationship of such training criteria to later criterial of effective job performance is problemmatical, as is also the relationship of predictor test performance to the job proficiency criteria (i.e. "validity").

Quite simply: it is extremely unlikely that criteria measures (whatever they turn out to be) obtained only 1 $\frac{1}{2}$ - 2 months* into a four year apprentice program are at all capable of yielding meaningful validation evidence without extended follow-up. In the absence of any empirical data to the contrary, two months is clearly an inadequate approximation to four years.

Yours truly,

Joel Lefkowitz

Jay Finkelman

Joel Lefkowitz, Associate Professor
Jay M. Finkelman, Associate Professor

* It is our understanding that apprentice-trainees have been receiving work training on a one month on - one month off schedule.

COMPENSATION RATE

The Corporation will bill at the following rate:

$400.00 per day for professional time

$150.00 - $200.00 per day for staff support time

Reimbursable expenses at cost

Invoices will be submitted monthly for fees and charges incurred during the previous calendar month.

PROFESSIONAL RESPONSIBILITY

The study will be done in a professional manner so as to comply with such standards as those established by the American Psychological Association, and our understanding of the relevant standards set forth in the published Equal Employment Opportunity Commission Guidelines. Staff members of The Psychological Corporation who do such analyses or conduct studies will be available as witnesses to describe their methodology and report their findings at any hearing, formal or informal where the results are at issue. For such appearances, The Corporation will be paid the standard daily rates, plus expenses, for the staff members involved.

OPERATING PROCEDURE

The Corporation will provide specific instructions for compiling the necessary data. For example, we will need the following information for those tested in December 1975:

Raw scores of applicants on the following tests:

1. Bennett Mechanical Comprehension Test, Form S
2. Multiple Aptitude Test 7 Applied Science and Mechanics
3. Multiple Aptitude Test 8 Spatial Relations - Two Dimensions
4. Multiple Aptitude Test 9 Spatial Relations - Three Dimensions
5. The test described as the "Read and Follow Directions" test.

In addition, we will require the following data for each person tested in December 1975 who took the tests listed above:

1. Name
2. Sex
3. Race
4. Enrollment in Recruitment Training Program - Yes or no
5. Last Grade Completed
6. Hired or Not Hired in Apprentice Training Program - H or NH
7. Date of Acceptance into program of those hired.

Upon receipt of complete data in the form requested, The Corporation will then arrange for:

1. Interviews with Trainers of the Related Studies aspect of the Training Program.
2. Interviews with supervisors of those accepted into the Apprentice Training program.
3. Obtaining copies of written training program materials.
4. Obtaining information about evaluating trainees' performance in the Related Studies aspect of the training program.

After receipt of the information requested, The Corporation will be the sole judge about a study of those apprentices who were appointed from the December 1975 testing eligibility list. If such a study is not feasible, this judgment will be communicated to the client in writing. If the client agrees to terminate the study of those appointed as a result of the December 1975 testing, the client will be billed for the professional and staff support time expended in this phase of the study.

If a study of those appointed from the eligibility list developed from the December 1975 testing is not feasible and the client wishes to expand the study, The Corporation will request information about those currently in the apprentice training program who were appointed after 1969. The goal is to develop validity data for tests given to those who are current apprentices. If, after receipt of the requested information, in the sole judgment of The Corporation, the data are not adequate to conduct a validation study, the client will be notified and subsequently billed for professional and staff support time expended in this phase of the study.

If, in the sole judgment of The Corporation, a study is feasible, The Corporation will conduct the study in accordance with the manner prescribed for collecting the data, receipt of such data and accepted relevant professional principles.

CHARGES

The client will be billed in accordance with the fee schedule described above. On the basis of a review of charges for previous studies of this type, the professional fees should be approximately $2,000.00, and the reimbursable expenses should not exceed $200.00. Unforeseen contingencies may arise requiring more

extensive professional and staff support commitments than could be reasonably expected for studies of this type. The estimate of professional fees and reimbursable expenses should not be construed as a commitment to complete the study for this estimated fee. The Corporation shall not be held to this estimate, since foreseeable and unforeseeable events may preclude successful completion of the study for the estimated fee. The client will be billed on the basis of the fee schedule described above -- time and charges.

CRITERION DEVELOPMENT

If the available criteria are deemed inadequate, part of the study will include the development of adequate criterion measures. This development will not commence until we receive written acceptance by the client to engage in criterion development. Lack of adequate criterion measures will cause The Corporation to describe the inadequacies, and require devising new job performance measures, in order to have a professionally adequate study.

CONDUCT OF THE STUDY

We will study the relationship between scores on the tests described above and measures of job performance for those in the apprentice training program conducted by the JAC. If this study shows that there is a significant correlation between test scores and measures of job performance, then we shall conclude that the test score(s) are valid predictors of job success. The data attesting to such validity will be assembled in a manner congruent with the requirements of relevant federal agencies.

TIME SCHEDULES

The Corporation understands that the client wishes to have the results of the study available for review on or before June 4, 1976. The results can be made available on or before June 4, 1976 provided that all test and criterion data requested by The Corporation are given to The Corporation on or before May 21, 1976. If a study of those appointed as a result of the December 1975 test is not feasible, this determination must be made on or before May 1, 1976. We must have all the information we request for the apprentices tested in December 1975 by April 15 in order to determine if a study of this group is feasible. This will give us time to determine the data required for studying performance of apprentices appointed after the 1969 testing, which was the subject of court scrutiny leading to the order dated August 28, 1975.

BFS PSYCHOLOGICAL ASSOCIATES, INC.
666 FIFTH AVENUE, NEW YORK, NEW YORK 10019 • TELEPHONE: 212 765-7220

April 12, 1976

Ms. Ellen K. Sawyer
Assistant CorporationCounsel
City of New York Law Dept.
Municipal Building
New York, N.Y. 10007

Dear Ms. Sawyer:

With regard to your letter of March 29, 1976 concerning the possible "content validation" of the December, 1975 J.A.C. apprenticeship examination, there exist three pertinent issues:

(1) A content validation study, if conducted appropriately, is a time-consuming and no less complex task than a criterion-related validity study. To look upon it as a "short-cut approach to test validation" would represent not only a substantive error (see points 2 and 3) but a mistake with respect to time requirements, as well. It requires, for example, an extensive job analysis that, to our knowledge, has never been conducted in this case.

(2) "Content validity" is not a substitute for "criterion-related (preferably predictive) validity." It is extremely useful, for example, in providing needed information for the construction and/or development of employment tests; it does not, in most instances, provide information directly pertinent to the prediction of employee or apprentice performance. It also is generally a more inferential process.

(3) There is some disagreement among Industrial psychologists with regard to the appropriateness of content validation and with respect to accepted procedures for conducting such a study.

With regard to appropriateness, we agree with the EEOC guidelines (as, probably, do most industrial psychologists, on this issue) that criterion-related validity is called for unless not technically feasible. Although there are some difficulties extant in this apprentice situation, we do not feel that they are so critical as to render a predictive criterion-related validity study "not feasible."

Moreover, with regard to the lack of well-established procedures, we feel that use of the relatively contentious method of content validation is especially uncalled for in this case -- in comparison to the more established procedures for criterion-related predictive validity studies.

We hope that this is responsive to your questions.

Yours truly,

Joel Lefkowitz, Ph.D.

Jay M. Finkelman, Ph.D.

JL, JF/ha

STEVENS INSTITUTE OF TECHNOLOGY

HOBOKEN, NEW JERSEY
07030

LABORATORY OF PSYCHOLOGICAL STUDIES

(201) 792-2700
(212) 732-8237

Richard S. Barrett, Ph.D.
Director
Jay I. Gottesman, Ph.D.
Manager, Industrial Services
H. Karl Springob, Ph.D.
Manager, Counseling Services

April 12, 1976

Ms. Ellen Sawyer
Office of the Corporation Counsel
New York City Law Department
Municipal Building
New York, N.Y. 10007

Dear Ms. Sawyer:

We have reviewed the comments of Dr. Lefkowitz and Dr. Finkleman. It is hoped that our responses will clear up any ambiguity concerning the proposed content validation strategy:

STEP 2: We have considered this issue and agree that there is no current necessity for specifying reading and arithmetic requirements over and above the overall task analysis to be done.

STEP 4 (a): Our task analytic procedures to date appear to indicate that the current nature of the sheetmetal trade reflects considerable specialization as a consequence of increased technology, automation, division of labor, prefabrication and the economies of scale. Our observations indicate that many workers perform specialized tasks rather than the complete array of craft skills. Consequently, we are presently considering as a viable model of content validity, a series of tasks covering the array of field and shop assignments in the air-conditioning and duct aspect of the industry (which comprises approximately 85 to 90% of the work done in the sheetmetal industry).

As presently envisioned, but subject to revision as we proceed toward the completion of the task analysis, we feel that the work sample tests (criteria) should consist of a series of tasks

taken directly from work situations. The tasks should be representative of the kind of work actually done and consistent with objective ratings of the frequency with which the tasks occur and of their importance to the trade.

The ability to demonstrate journeyman level skill is envisioned as requiring a satisfactory performance on some, but not necessarily all of these tasks. Satisfactory performance on these content valid tasks will be established on the basis of objective standards, to be determined on an a priori basis, by a group of experts in the area.

We propose to recommend that the experts include a skilled journeyman from Local 28, a representative of the Employers Association and a qualified instructor from the city vocational high school system. Ideally the composition of experts should be ethnically balanced. It is intended that the actual work sample tests be blind rated by the same or a comparably constituted staff of experts. In effect we are proposing a modified additive compensatory model as most representative of the present state of affairs in the sheet metal trade.

4 (b): This question is inappropriate in terms of a content Validation strategy. The work sample comprises the criteria and thus there is no question of error in prediction. Therefore we do not propose to have different passing scores for any group.

4 (c): These comments do not appear pertinent in light of the proposed strategy. The task analysis serves as the basis for the development of the work sample tests while simultaneously providing the needed support for a claim of job relatedness. Since the tasks are extracted from the work setting and are currently being performed by journeyman in the shops or in the field as part of daily work requirements, journeyman tenure does not appear to us to be an issue.

STEP 7: Same comments as given under Step 4.

STEP 8: As has been previously stated the task analysis serves as the criterion of representativeness. Realizing the complicated nature of the sheetmetal trade, a modified additive compensatory model has been proposed as noted above. With reference to the composition of possible alternative forms we propose to use the same tasks with modifications only in dimensions. Therefore re-validation for each form appears unnecessary.

Very truly yours,

Jay Gottesman, Ph.D.
Manager, Industrial Services

JG/li

cc: Edward Stack
Sol Bogen
David Roff
Dr. R. S. Barrett

The City of New York

LAW DEPARTMENT
MUNICIPAL BUILDING
NEW YORK, N. Y. 10007

W. BERNARD RICHLAND,
Corporation Counsel

March 31, 1976

Mr. David Raff
49-51 Chambers Street
New York, New York 10007

Dear Mr. Raff:

Pursuant to our understanding with defendants that any proposed validation methods and studies would be discussed with our expert witnesses prior to the study being made, I sent to our experts the proposal submitted to the JAC by The Psychological Corporation for validation of the December 13, 1975 apprenticeship test.

It is relevant to note here that this understanding was forged in an effort to avoid the past controversy among the experts as to the methodology of preparation of the December 13th apprenticeship examination and the sufficiency of data for validation of that test. This dispute necessitated a "last minute" hearing before Judge Werker only two days before the giving of the test. Due to the exigencies of time and the complexities involved in devising a proper validation method, that test, the composition of which was ultimately decreed by Judge Werker, was not validated. All this was brought to the attention of Judge Werker at the hearing in his chambers. However, at the time Judge Werker allowed the non-validated test to be given, non-whites had the protection of an admission preference. (I have enclosed copies of correspondence between the parties concerning this dispute to substantiate my statements. Copies of all this correspondence were forwarded to you and all counsel at the time but I have attached them here in the interests of economy.)

It is apparent from the enclosed letter of Drs. Lefkowitz and Finkelman that, due to the insufficiency of the data, the next apprenticeship test, scheduled to be given this spring, is unlikely to be validated. (Along with that enclosure, I have also enclosed a copy of The Psychological Corporation's submission to the JAC.)

Additionally, I would like to point out that the defendants have yet to validate the journeyman's test given last October 11, 1975. I have enclosed a copy of my past correspondence to you on this issue, including the letter to me from Drs. Lefkowitz and Finkelman, to remind you that Dr. Gottesman has not yet addressed himself, as asked, to the problems raised by our experts with respect to that validation study.

Very truly yours,

Ellen Kramer Sawyer

Ellen Kramer Sawyer
Assistant Corporation Counsel

cc: Sol Bogen, Esq.
One Penn Plaza
New York, New York 10001

Robert B. Fiske, Jr.
United States Attorney
1 St. Andrew's Plaza
New York, New York 10007
Attn: Taggart D. Adams, Esq.

Rosenthal & Goldhaber
44 Court Street
Brooklyn, New York
Attn: William Rothberg, Esq.

Louis Lefkowitz
Attorney General
New York State
2 World Trade Center
New York, New York
Attn: Dominick Tuminaro, Esq.

001701

DAVID RAFF
ATTORNEY AT LAW
SUITE 220
49-51 CHAMBERS STREET
NEW YORK, NEW YORK 10007

TELEPHONE {566-4874
{566-4875

April 12, 1976

William Rothberg, Esq.
Rosenthal & Goldhaber
44 Court Street
Brooklyn, New York

Dear Mr. Rothberg:

In order to bring my records up to date, please advise me as to the following:

1. What the JAC has done to comply with Paragraph 46 of the AAP.

2. What the JAC has done to comply with Paragraph 43 of the AAP.

3. What action the JAC has taken with regard to Paragraph 34 of the AAP.

4. Why the records sent to me on April 6, 1976 show only 53 apprentices admitted rather than the 66 stipulated to by the parties.

5. Whether or not there has been any apprentice drop outs as a result of the three platoon rotation.

6. Whether or not Triangle Sheet Metal will participate in the May rotation.

Yours truly,

David Raff

cc: Sol Bogen, Esq.
Taggart Adams, Esq.
Ellen Kramer Sawyer, Esq.
Dominick Tuminaro, Esq.

DAVID RAFF
ATTORNEY AT LAW
SUITE 220
49-51 CHAMBERS STREET
NEW YORK, NEW YORK 10007

TELEPHONE {566-4874
{566-4875

April 12, 1976

Sol Bogen, Esq.
One Penn Plaza
New York, New York

Dear Mr. Bogen:

In order to bring my records up to date please advise me as to the following:

1. Over four months ago I requested a report on the role of business agents, both historically and currently, in Local 28. To my knowledge no such report has been sent me.

2. What Local 28 has done to comply with paragraph 46 of the AAP.

3. What Local 28 had done to comply with paragraph 43 of the AAP.

4. What Local 28's current postion is with regard to apprentice referrals. Please identify those employers making requests for apprentices, including number requested, where the union refuses to refer apprentices. State why the union is taking that position.

5. What plans are being made for the Spring journeyman test including: (1) Projected date, (2) Plan for recruitment, (3) Type of test, (4) Location (5) Status of validation study.

Yours truly,

David Raff

cc: William Rothberg, Esq.
Taggart Adams, Esq.
Ellen Kramer Sawyer, Esq.
Dominick Tuminaro, Esq.

ROSENTHAL & GOLDHABER
COUNSELORS AT LAW
44 COURT STREET
BROOKLYN, N.Y. 11201

(212) 237-9559

BENJAMIN ROSENTHAL (1905-1969)
MAX M. GOLDHABER
RICHARD F. GOLDHABER
WILLIAM ROTHBERG
ARTHUR M. GABOR

LONG ISLAND OFFICE
150 BROAD HOLLOW ROAD
MELVILLE, N.Y. 11746
(516) 421-2468

April 20, 1976

COPY

David Raff, Esq.
40-51 Chambers Street
New York, New York 10007

Dear Mr. Raff:

In reply to your letter dated April 13, 1976, I shall discuss the matter with Co-counsel, Sol Bogen, upon his return from vacation and we shall then jointly advise.

Very truly yours,

ph

William Rothberg

c.c. Sol Bogen, Esq.
Taggart Adams, Esq.
Allen Sawyer, Esq.
Dominick Tuminaro, Esq.

DAVID RAFF
ATTORNEY AT LAW
SUITE 220
49-51 CHAMBERS STREET
NEW YORK, NEW YORK 10007

TELEPHONE {566-4874
{566-4875

April 23, 1976

Sol Bogen, Esq.
One Penn Plaza
New York City, New York
10036

William Rothberg, Esq.
Rosenthal & Goldhaber
44 Court Street
Brooklyn, New York

Gentlemen:

Please provide me with the following information:

1. Name, address, telephone number of all white, Local 28 members in good standing.

2. Name, address, telephone number of all non-white, Local 28 members in good standing.

3. Name, address,telephone number of all Local 28 pensioners (within the Administrator's interpretation of paragraph 2 of the AAP).

4. Name, address, telephone number, term, and non-white or white identification of all indentured apprentices.

5. Percentage of non-whites in Local 28 and JAC.

As to each person listed above also provide the following, from September 2, 1975 to May 3, 1976:

A. Name of employer or employers in the sheet metal industry for whom the person worked and dates of employment.

B. Total number of hours each person worked in sheet metal.

C. If they are currently employed, whether such employment is full time or on worksharing.

Additionally, provide a composite for both journeymen and apprentice of:

1. Total number of hours worked for whites, and average number of hours worked.

2. Total number of hours worked for non-whites, and average number of hours worked.

Yours truly,

David Raff

cc: Taggart Adams, Esq.
Ellen Kramer Sawyer, Esq.
Dominick Tuminaro, Esq.
Gerald Dunbar, Esq.

001706

ROSENTHAL & GOLDHABER
COUNSELORS AT LAW
44 COURT STREET
BROOKLYN, N.Y. 11201

(212) 237-9559

BENJAMIN ROSENTHAL (1905-1969)
MAX M. GOLDHABER
RICHARD F. GOLDHABER
WILLIAM ROTHBERG
ARTHUR M. GABOR

LONG ISLAND OFFICE
150 BROAD HOLLOW ROAD
MELVILLE, N.Y. 11746
(516) 421-2468

April 6, 1976

David Raff, Esq.
49-51 Chambers Street
New York, New York 10007

Dear Mr. Raff:

I write to advise as to the current status of the first-term apprentice class in the Sheet Metal Joint Apprenticeship Program.

Since February 1976, fifty-three (53) individuals have been indentured into the program. Their names are annexed hereto and marked EXHIBIT "A". Of those 53, fourteen (14) were assigned for employment for the period February 9, 1976 through March 5, 1976. Their names are annexed hereto and marked EXHIBIT "B".

A second group of 14 was assigned for employment for the period March 8, 1976 through April 2, 1976. Their names are annexed hereto and marked EXHIBIT "C".

A third group of eighteen (18) was assigned for employment for the period April 5, 1976 through April 30, 1976. One employer, Arrow Louver, advised the JAC that it could only employ one first-term apprentice rather than two, and there were five additional requests for apprentices which were filled by the JAC. One employer, Triangle Sheet Metal, asked that the original eight (8) that were assigned to it be returned for this rotation. When this was not done, it chose not to accept any new apprentices other than those who had been previously employed by it. One new apprentice was not notified in time and did in fact report to Triangle on April 5 and was accepted for employment. Accordingly, of the 18 assigned, eleven are currently working. Their names are annexed hereto and marked EXHIBIT "D".

David Raff, Esq. April 6, 1976

There are presently nine indentured apprentices who are attending school but who have not been employed in the field. Their names are annexed hereto and marked EXHIBIT "E". Seven indentured apprentices have either not reported to work when assigned, or not reported to school. They have been notified by registered mail that they are subject to dismissal from the program. Their names are annexed hereto and marked EXHIBIT "F".

The JAC will be meeting on Monday, April 12th, at which time the rotation system will be discussed.

I shall keep you advised.

Very truly yours,

William Rothberg

ph
Enc.

c.c. Sol Bogen, Esq.
Ellen Sawyer, Esq.
Taggart Adams, Esq.
Dominick Tuminaro, Esq.

4/6/76

SHEET METAL WORKERS (LOCAL UNION NO. 28)
JOINT APPRENTICESHIP COMMITTEE & TRUST

INDIVIDUALS INDENTURED AS FIRST-TERM APPRENTICES (53)

RONALD ANDERSON
JOHN ARROYO
WILLIE F. BENNING
STEVEN BLITZ
NATHANIEL BROWN
GENG YIN CHAN
KAI S. CHAN
YAT CHAN
JESSE CHIN
JIMMY CHIN
PHILIP CHIN
KEVIN DEAVER
PEDRO A. ESPINAL
ARMANDO FAGIN
GERARD FERNANDEZ
EDWIN FLEMING
WINSTON GEE
CARL GOMEZ
GIOVANNI GONZALEZ
OWEN GRAYSON
JOSEPH HUBER
KEN JACKSON
ROBERT JONES
JOSEPH LAM
DONALD L. LAW
WING CHEONG LEE
WILLIAM LEUNG
MIKE LILLY
DANIEL LINARES
STEVE H. LINDBLAD
RONALD MASON
CHIN LEE MUI
CHARLES NELSON
DAVID NG
RICHARD W. PARRISH
JOHN E. PRICE
CARLOS RAMIREZ
JOHN RICE
JOHN RIVERS
RAMON RODRIQUES, JR.
THOMAS S. RODRIQUEZ
WILLIAM RODRIQUEZ
CHARLES R. RUSSO
ROBERT SCHLUTER
MARTIN J. SINNOTT
STEVE B. STANLEY
MIKE STEINMAN
YUT WAI TOM
NEIL WALASH
EDWARD J. WESTMORELA
THOMAS M. WHITNEY
CARLTON WILLIAMS
RICHARD WILLIAMS

001709

EXHIBIT "A"

SHEET METAL WORKERS (LOCAL UNION NO. 28)
JOINT APPRENTICESHIP COMMITTEE & TRUST

APPRENTICES ASSIGNED TO EMPLOYMENT
2/9/76 - 3/5/76 (14)

NAME	EMPLOYER
RONALD ANDERSON	TRIANGLE
STEVEN BLITZ	TRIANGLE
JIMMY CHIN	SUNA
PHILIP CHIN	BROOK
ARMANDO FAGIN	TRIANGLE
EDWIN FLEMING	TRIANGLE
WINSTON GEE	ARROW
GIOVANNI GONZALEZ	ARROW
OWEN GRAYSON	TRIANGLE
JOSEPH HUBER	TRIANGLE
ROBERT JONES	TRIANGLE
CHARLES NELSON	BROOK
JOHN RICE	FISHER SKYLIGHT
RICHARD WILLIAMS	TRIANGLE

EXHIBIT "B"

SHEET METAL WORKERS (LOCAL UNION NO. 28)
JOINT APPRENTICESHIP COMMITTEE & TRUST.

APPRENTICES ASSIGNED TO EMPLOYMENT
3/8/76 - 4/2/76 (14)

NAME	EMPLOYER
WILLIE F. BENNING	BROOK
NATHANIEL BROWN	BROOK
GENG YIN CHAN	TRIANGLE
KAI S. CHAN	TRIANGLE
JESSE CHIN	FISHER SKYLIGHT
GERARD FERNANDEZ	TRIANGLE
KEN JACKSON	TRIANGLE
JOSEPH LAM	ARROW
WING CHEONG LEE	TRIANGLE
RAMON RODRIQUES, JR.	SUNA
THOMAS S. RODRIQUEZ	TRIANGLE
WILLIAM RODRIQUEZ	TRIANGLE
THOMAS M. WHITNEY	ARROW
CARLTON WILLIAMS	TRIANGLE

001711

EXHIBIT "C"

SHEET METAL WORKERS (LOCAL UNION NO. 28)
JOINT APPRENTICESHIP COMMITTEE & TRUST

APPRENTICES ASSIGNED TO EMPLOYMENT
4/5/76 - 4/30/76 (11)

NAME	EMPLOYER
JOHN ARROYO	BROOK
PEDRO A. ESPINAL	SUNA
CARL GOMEZ	SIMPSON
DONALD L. LAW	ARROW
DANIEL LINARES	FLANNERY
RICHARD W. PARRISH	FISHER
JOHN E. PRICE	FISHER
CARLOS RAMIREZ	BROOK
ROVERT SCHLUTER	ESSEX
MARTIN J. SINNOTT	TRIANGLE
YUT WAI TOM	SIMPSON

EXHIBIT "D" 001712

SHEET METAL WORKERS (LOCAL UNION NO. 28)
JOINT APPRENTICESHIP COMMITTEE & TRUST

APPRENTICES WHO ARE ATTENDING SCHOOL BUT WHO HAVE NOT BEEN EMPLOYED IN THE FIELD (9)

YAT CHAN

KEVIN DEAVER

MIKE LILLY

STEVE H. LINDBLAD

CHIN LEE MUI

DAVID NG

MIKE STEINMAN

NEIL WALASH

EDWARD J. WESTMORELAND

EXHIBIT "E"

SHEET METAL WORKERS (LOCAL UNION NO. 28)
JOINT APPRENTICESHIP COMMITTEE & TRUST

APPRENTICES WHO HAVE NOT REPORTED TO WORK OR SCHOOL (7)

JIMMY CHIN	Did not report to Suna when assigned for February rotation and did not report to school.
ARMANDO FAGIN	Did not report to school after completing his employment during first rotation.
WILLIAM LEUNG	Has not reported to school.
RONALD MASON	"
JOHN RIVER	"
CHARLES R. RUSSO	"
STEVE B. STANLEY	"

001714

EXHIBIT "F"

SHEET METAL WORKERS (LOCAL UNION NO. 28)
JOINT APPRENTICESHIP COMMITTEE & TRUST

APPRENTICES WHO HAVE NOT REPORTED
TO WORK OR SCHOOL (7)

JIMMY CHIN	Did not report to Suna when assigned for February rotation and did not report to school.
ARMAI FAGIN	Did not report to school after completing his employment during first rotation.
WILLIAM LEUNG	Has not reported to school.
RONALD MASON	"
JOHN RIVER	"
CHARLES R. RUSSO	"
STEVE B. STANLEY	"

001715

EXHIBIT "F"

DAVID RAFF
ATTORNEY AT LAW
SUITE 220
49-51 CHAMBERS STREET
NEW YORK, NEW YORK 10007

TELEPHONE {566-4874
{566-4875

April 23, 1976

William Rothberg, Esq.
Rosenthal & Goldhaber
44 Court Street
Brooklyn, New York

Dear Mr. Rothberg:

On April 6, you sent me a summary of manpower control reports for January through March. Please furnish me a similar summary for the month of April.

Additionally, please send me a full listing for all companies providing these reports. Such listing is to include:

1. Name of principal officer.

2. Address and telephone number of the company.

3. Listing of all contracts the company currently has including: the name and address of the public or private organization letting the contract, the name and address of the construction site, and the dollar amount of the contract.

4. How many apprentices each company requested for May and the term requested.

5. Whether or not the union is blocking an apprentice request and the reason given by the union for such action.

Yours truly,

David Raff

cc: Sol Bogen, Esq.
Taggart Adams, Esq.
Ellen Kramer Sawyer, Esq.
Dominick Tuminaro, Esq.
Gerald Dunbar, Esq.

SOL BOGEN
ATTORNEY AT LAW

PENNSYLVANIA 6-7570
(AREA CODE 212)

ONE PENN PLAZA, NEW YORK, N. Y. 10001

December 23, 1975

David A. Raff, Esq.
49-51 Chambers Street - Room 220
New York, N. Y. 10007

Re: EEOC and City of New York
vs.
Local 638 . . . Local 28, etc., et al
71 Civ. 2877 (HFW)

Dear Mr. Raff:

This is an application on behalf of Local 28 to defer the establishment of "a program for admission to Local 28 journeyman membership of non-whites who have had four years (of sheet metal) experience," as provided in Section 15 of the Affirmative Action Program, from January 1, 1976 to April 1, 1976.

This extension of time is requested upon the following grounds:

1. The records developed from the Journeyman's Examination of October 11, 1975, strongly indicate that there are few, if any, non-whites who might be qualified with sufficient appropriate sheet metal experience to justify a program of such admissions at this time.

2. The cost of the development and administration of any such program, in light of the limited potential, would constitute an undue and unnecessary burden on the Union's present financial crisis - records of Local 28's precarious fiscal position were previously furnished to you and counsel for all parties.

3. The severity of current unemployment (approximately 1600 journeymen; 120 apprentices) would create a counterproductive atmosphere for such proposed admissions, now, of minority groups. There being no jobs available, the non-whites (as well as the whites to whom these procedures would be extended) could reasonably (i) consider the program an empty gesture without jobs; (ii) not seek admission; and (iii) look upon the entire program as a tactic or stratagem offered at a time when its results would be misleading and meaningless to them.

4. The mechanics of this admission procedure, particularly the definition or content of appropriate "sheet metal experience" -

SOL BOGEN
ATTORNEY AT LAW

which proved troublesome and confusing as an eligibility requirement for the Journeyman Examination - should be thoroughly and carefully prepared and reviewed by counsel for the parties and the Administrator. This approach would require more time than now allotted under the Affirmative Action Program.

For all of these reasons, it is respectfully urged that a program of "experience admissions" be deferred to April 1, 1976.

Very truly yours,

SOL BOGEN

SB/fl
opeiu/153

cc. Taggart D. Adams, Esq.
Ellen Kramer Sawyer, Esq.
Dominick Tuminaro, Esq.
William Rothberg, Esq.

DAVID RAFF
ATTORNEY AT LAW
SUITE 220
49-51 CHAMBERS STREET
NEW YORK, NEW YORK 10007

TELEPHONE {566-4874
{566-4875

December 29, 1975

Sol Bogen, Esq.
One Penn Plaza
New York, New York 10001

Dear Mr. Bogen:

I am in receipt of your application on behalf of Local 28 to defer the "four year experience admission" program for journeymen from January 1, 1976 to April 1, 1976. Without ruling on the merits of the application I am granting Local 28 a temporary stay until 5:00 P.M. January 9, 1976.

In your application of December 23, in paragraph 1, you state that there is an indication "that there are few, if any, non-whites who might be qualified with sufficient appropriate sheet metal experience..." I have not yet seen a definition of what "sufficient appropriate sheet metal experience" is. Please have your client provide a working definition of your terms so that I, and all counsel, will have an idea of what your paragrph 1 means.

In order to deal with the definition problem more fully I am calling a conference of all counsel for Thursday, January 8, 1976 at 10:30 A.M. This conference will be held at Mr. Adams'office unless otherwise notified.

I expect at that time to make a ruling on your deferral request. Prior to that meeting please provide me with your definition of "four years of sheet metal experience" and a draft of an application form for persons who may be eligible under this program.

Yours truly,

David Raff

cc: William Rothberg, Esq.
Taggart Adams, Esq.
Ellen Kramer Sawyer, Esq.
Dominick Tuminaro, Esq.

SOL BOGEN
ATTORNEY AT LAW

PENNSYLVANIA 6-7570
(AREA CODE 212)

ONE PENN PLAZA, NEW YORK, N. Y. 10001

Appeals

January 6, 1976

'76 JAN 7 AM 10 31
LAW DEPARTMENT

David A. Raff, Esq.
49-51 Chambers Street - Room 220
New York, N. Y. 10007

Re: EEOC and City of New York
vs.
Local 638 . . . Local 28, etc., et al
71 Civ. 2877 (HFW)

Dear Mr. Raff:

In accordance with your letter request dated December 29, 1975, in connection with Local 28's application to defer "experience" admissions for journeymen, provided in the Affirmative Action Program, from January 1, 1976 to April 1, 1976, enclosed herewith is a draft of a proposed application form to be used in connection therewith.

In regard to the definition of "appropriate sheet metal experience" for such admissions, the following is proposed on behalf of Local 28:

"Employment or military service for four (4) years, during past six (6) years, as a journeyman or mechanic sheet metal worker in commercial or industrial construction, performing sketching, fabrication and installation of air conditioning, ventilation and/or heating systems."

Very truly yours,

SOL BOGEN

SB/fl
opeiu/153
Enclosure

cc. Taggart D. Adams, Esq.
Ellen Kramer Sawyer, Esq.
Dominick Tuminaro, Esq.
William Rothberg, Esq.
(w/encl.)

001720

TDA:cbm

70-1674

January 14, 1976

David A. Raff
49-51 Chambers Street
New York, New York 10007

Re: EEOC, et al v. Local 28 et al.
71 Civ. 2877

Dear Mr. Raff:

This letter will respond to Mr. Bogen's letter to you dated January 6, 1976 regarding a definition of sheet metal experience for the four-year experience program (¶15, AAP).

We believe that the foundation of such a definition must be AAP Paragraph 15 which states in pertinent part:

> ". . . four years experience obtained in the United States or elsewhere, in sheet metal work or employment reasonably related or similar to sheet metal work, including experience in the Armed Forces, or vocational training related to the skills of a sheet metal worker."

We further believe that in the development of a working definition the so-called tripartite board will play a substantial role since they have the duty to evaluate whether or not an applicant has satisfied the four years of experience requirement [AAP ¶ 15 (d)].

However, it seems to us that certain basic parameters of the definition should be outlined by the parties and the Administrator may have to resolve disputes [See AAP ¶ 45 (a)]. For this reason we outline here our objections to Local 28's proposal and our suggested parameters.

1) Nothing in the AAP suggests or infers that the requisite experience must have been obtained in the last six years. Given the unemployment situation which apparently has affected the industry since 1973 such a requirement is unfair. Its unfairness is highlighted by the possibility that some present members of Local 28 might not be able to show employment in the last two years.

2) We are not fully cognizant of what status is inferred by the word "mechanic"; however, as long as the applicant did sheet metal work his status (e.g. apprentice, helper, etc.) is irrelevant.

3) We object to limiting eligibility to experience in "commercial or industrial construction". First, such areas as marine and residential sheet metal work is sound experience. (Indeed Local 28's collective bargaining agreement includes residential work). Second we reject the limitation as to only construction sheet metal work.

4) We object to requiring that experience include "sketching, fabrication and installation . . ." It was repeatedly brought out at trial that experience and proficiency in all these areas was not a requirement for a sheet metal worker. We point out that the President of Local 28 testified that "sketching" is a "highly skilled specialty" in Local 28 and the "most highly compensated". (Tr. 2289-90)

5) Sheet metal work consists of more than "air conditioning, ventilation and/or heating systems". While that may be the bulk of what Local 28 journeymen do, it should not be dispositive of what is requisite experience to be able to perform that work.

6) We note that Local 23's definition does not include any reference to "vocational training" or "employment reasonably related or similar to sheet metal work". Such experience is required to be considered by the tripartite board pursuant to AAP ¶ 15.

In sum we believe Local 23's proposed definition contains limitations which are (a) contrary to the intent and plain meaning of the AAP, and (b) unnecessary to establishing ability to do the work required of a journeymen sheet metal worker.

We suggest that a working definition should include no time limitations as to when the experience was obtained; should include marine, residential and other non-commercial or industrial sheet metal work as well as vocational training; should not require experience in each particularized specialty of sheet metal work such as "sketching"; and should, as required by the AAP, include experience in work "reasonably related or similar to sheet metal work".

Very truly yours,

THOMAS J. CAHILL
United States Attorney

By: _____
TAGGART D. ADAMS
Chief, Civil Division
Telephone (212) 791-0051

cc: Sol Bogen
Rosenthal & Goldhaber
Attn: William Rothberg
W. Bernard Richland
Attn: Ellen Kramer Sawyer
Louis Lefkowitz
Attn: Dominick Tuminaro

January 13, 1976

David Raff, Esq.
Administrator
49-51 Chambers Street
Suite 220
New York, N.Y. 10007

Dear Mr. Raff:

It is the City's understanding, based on the meeting of January 8th between yourself and all parties that the tri-partite Board of Examiners will have been established and commence functioning by February 15, 1976.

Under the Affirmative Action Program (para. 15[d]), to be admitted to the union via the four year experience route, an applicant must:

> "establish to the satisfaction of a majority of a board of three members knowledgable in sheet metal work ... [that he] has the requisite sheet metal experience".

To enable the Board to fulfill its obligations under the Program and to commence functioning by February 15th, it is necessary to devise immediately a preliminary application form for four-year experience admission program. We suggest that the application form, except insofar as the Board may later wish to modify the language, conform to the language of the Affirmative Action Program which describes the requisite experience as (para.15):

> "four years experience obtained in the United States or elsewhere, in sheet metal work or employment reasonably related or similar to sheet metal work, including experience in the Armed Forces, or vocational training related to the skills of a sheet metal worker".

We reject Mr. Bogen's proposed draft for the experience part of the application form as non-conforming with the language and intent of the Program. Further, it is clear that Mr. Bogen's application is far too narrow and seeks to impose the exact kinds of unnecessity restrictive impediments in the four-year admission program that were removed from Local 28's other selection routes after the lengthy trial in the District Court.

(contt ...)

We suggest that this preliminary application form be available within the next two weeks and be used as the actual application form for those applicants who apply by February 15th. We have no objection to the Examining Board altering future application forms to include additional information to assist the Board in performing its responsibilities.

Yours truly,

Ellen K. Sawyer
Assistant Corporation Counsel

EKS/dg

cc: Sol Bogen, Esq.
William Rothberg, Esq.
Taggart D. Adams, Esq.
Dominick Tuminaro, Esq.

PRELIMINARY REPORT

TO

ROSENTHAL AND GOLDHABER

Procedure Used to Select JAC Apprentices for the 1976 Training Program.

In accordance with the instructions received by The Psychological Corporation from Dr. Jay Gottesman of the Stevens Institute of Technology, each candidate's raw scores on the Bennett Mechanical Comprehension Test (BMCT)--Form S, and the Multiple Aptitude Test-7 (MAT-7) -- Applied Science and Mechanics -- were arithmetically summed to obtain a score designated as BMCT + MAT-7. In addition, in accordance with instructions, two sets of eligibility lists were developed; one, for "minorities", which included those designated as "Black" and "Spanish-surnamed", and one for "Other", which included those designated as "Caucasian", "Oriental" and "not classified". Each list showed those obtaining each BMCT + MAT-7 score ranked from high to low. It was understood that standing on the list determined the applicant's eligibility for the Apprentice Training Program. It was also understood that the current Equal Employment Opportunity Commission's Guidelines on Employee Selection Procedures (29 C.F.R. 1607 et. seq.) or "Guidelines" are the standards against which the validity of the selection "test" was to be judged. In accordance with such understanding, the validity study was therefore conducted using the BMCT + MAT-7 score as the "test" score.

> For the purpose of the guidelines in this part, the term "test" is defined as any paper-and-pencil or performance measure used as a basis for any employment decision. The guidelines in this part apply, for example to ability tests which are designed to measure eligibility for hire...(or)...membership.
>
> 29 C.F.R. 1607.2

Applicability of the "Guidelines"

Although the "Guidelines" are silent about the converse situation, they do speak about the issue of discrimination which calls forth their use as standards against which validation studies are judged.

> The use of any test which adversely affects...employment or membership opportunity of classes protected by title VII constitutes discrimination unless...validated....
>
> 29 C.F.R. 1607.3

Guidance about the kind of statistical analysis necessary to assess adverse effect has often been derived from Memo 4275-4, dated January 21, 1974 -- Questions and Answers on the OFCC Testing and Selection Order -- published by the Office of Federal Contract Compliance. The answer to Question 7, "What is Adverse Effect?" explains adverse effect in the following way:

> Adverse effect is a differential rate of selection (for hire, promotion, etc.) which works to the disadvantage of a covered group. One way to determine adverse effect is to divide the number of persons in the covered group selected, by the number of persons in this group who applied, and to compare this result with the result derived in the same way for the remaining applicants.... If the selection rate of applicants from the covered group is less than 4/5 of the rate for the remaining applicants, the other provisions of the Testing and Selection Order are applied.

Using this formula, the following data were prepared. The selection rates of "minority" applicants and "other" applicants were computed and compared according to this "4/5ths rule". The results of such analyses appear below.

	"Minority"	"Other"
N Applicants	351	206
N Accepted	36	36
Hiring Rate	.1026	.1748
4/5ths "Other" hiring rate	.1398	

Clearly, "minorities" were hired at less than 4/5ths the hiring rate of "Others". Thus, if the OFCC Guidance was accepted, adverse effect has been shown.[a]

However, the court's decision and orders clearly indicate that it is the EEOC Guidelines that are the standards against which selection standards are judged. In Chance v. Board of Examiners, repeatedly accepted in the 2nd circuit (see Vulvan and Jones v. HRA), the standard of "non-minorities" passing at a rate of 1.5:1 of the rate of minority "passes" has been used to determine adverse effect. The data responding to this standard is presented below.

---

[a] There is a peculiarity in the applicant group. The court order stipulates that "...the court has determined approximately 29% of the relevant labor force in New York City is non-white". However, 63.0% of the applicants were "minority", clearly at variance with the court-accepted data.

	"Minority"	"Other"
N Applicants	351	206
N Accepted	36	36
Hiring Rate	.1026	.1748
1.5 Minority Hiring Rate		.1539

Clearly, the "1.5:1 Standard" of the 2nd Circuit for determining adverse effect has been met. Mindful of the court's unhappiness with "statistical minefields" (Jones v. HRA), the Chi-Square test was computed using the data presented above. The results are shown below.

	Other	Minority	Total
Accepted	36	36	72
Not Accepted	170	315	485
Total	206	351	557

$\chi^2 = 6.0 \qquad p < .05$

Thus, using a statistic which is, in the Jones ruling "...a generally acceptable means of analyzing statistics of the type used in lawsuits such as this one," the data do support the contention of adverse effect. Therefore, the EEOC Guidelines appear to be applicable.

Sample Comparability

However, one of the Guidelines' dictums must be considered:

> Where a validity study is conducted in which tests are administered to applicants, with criterion data collected later,[b] the sample of subjects must be representative of the normal or typical candidate group for the job or jobs in question. This further assumes that the applicant sample is representative of the minority population available for the job or jobs in question in the local labor market.
>
> 29 C.F.R. 1607.5(b)(1)

Since the Court clearly stipulated that:

> "approximately 29% of the relevant labor force in New York City is non-white"

it appeared to be appropriate to test the proportion of minorities in the applicant sample against the court-stipulated minority proportion to determine if the specific guideline had been violated. The data for this test appear below.

	Proportion(P) of Sample Minority	Other	Difference
Applicant Sample Proportion	.63	.37	.34*
Stipulated Proportion	.29	.71	

$$Z = \frac{P_{ob} - P_n}{\sqrt{P_n Q_{n/N}}} = \frac{.34}{.0193}$$

* $Z = 17.62 \qquad p < .001$

[b] The condition under which this validation study was conducted.

It is obvious that the applicant population was so significantly different from the stipulated applicant population that the representativeness of the applicant population is highly questionable. In summary, adverse effect has been demonstrated statistically, but unrepresentativeness of the applicant population has also been demonstrated statistically.

At the onset of the study it was understood that the validity of the selection "test" would have to be evaluated within six months of the initial indentureship of apprentices accepted as a result of the December 1975 testing program. Consequently, the only criterion data available by that time would be for the first six months (or less than 1/8th) of the apprentice training program. A careful job analysis conducted by Dr. William Grieve, an expert in industrial arts training, disclosed that major or critical work behaviors could not be identified in on-the-job performance during that time limitation. The only useful criterion measures available were those obtainable in the related studies program in the apprentice school. However, measuring at best only 1/8th of the potentially available criteria was deemed appropriate since the proportion of hires was small.

> ...a relatively low relationship (between the test and criterion) may prove useful when proportionately few job vacancies are available.
>
> 29 C.F.R. 1607.5(c)(2)(i)

Since job performance measures were, within the time constraints imposed, technically deficient, the validity of the "test" could not be evaluated

against job performance measures, nor could other studies be cited pursuant to 29 C.F.R. 1607.7. This was because the "test" was unlike any previously administered test.

The data base is suspect. The relevant sections of the Guidelines state that

> Tests must be administered and scored under standardized conditions, with proper safeguards to protect the security of test scores....
>
> 29 C.F.R. 1607.5(b)(2)

Data analyses suggest that test security has been breached. Consider the table below showing the coefficients of correlation between the BMCT and the three Multiple Aptitude Tests (MAT).

	Multiple Aptitude Tests				
Group	Test 7 Applied Science & Mechanics	Test 8 Spatial Relations 2 - Dimensions	Test 9 Spatial Relations 3 - Dimensions	BMCT Mean	BMCT SD
Caucasian	.75	.13	.38	47.1	8.4
Black	65	.09	.34	44.9	9.4
Hispanic	.71	.28	.49	46.3	9.0
Oriental	.41	-.13	.21	56.0	11.4
Relevant Manual Data	.74				

The relationship between the BMCT and the three MATs was suspiciously different from similar relationships for the Caucasian and Hispanic Groups.

The Oriental group also performed suspiciously high on the BMCT but did not do as equivalently well on the comparable test (MAT-7), and showed considerable variation compared to the other groups in performance on the other two MAT tests. The suspicion is further substantiated by a comparison of test score performances.

	Means		Z score*	
Group	MAT-7	BMCT	MAT-7	BMCT
Caucasian	40.1	47.1	+.29	+.01
Black	36.5	44.9	-.24	-.21
Spanish	38.1	46.3	0	-.07
Oriental	38.9	56.0	+.12	+.92

* based on total group Mean (MAT-7 = 38.1, BMCT = 47.0) and SD (MAT-7 = 6.8, BMCT = 9.8). The Z score indicates the deviance from the Total Group Mean in Standard Deviation units. Thus a Z score of +1.00 indicates a deviance of one Standard Deviation from the Total Group Mean.

Thus, two highly correlated tests (BMCT and MAT-7, r = .74) showed largely disparate results for tested groups. The group -- Caucausian -- whose test performance was only slightly above the mean for a test that has been given repeatedly for this apprenticeship -- BMCT -- performed dramatically above the mean on a comparable test -- MAT-7. Conversely, a group -- Oriental -- whose test performance was only slightly above the mean on an unfamiliar test -- MAT-7 -- performed dramatically above the mean on a more familiar test -- BMCT.

A clue to what appears to have happened can be gleaned from a similarly constructed table.

Group	Means		Z-score*	
	MAT-8	MAT-9	MAT-8	MAT-9
Caucasian	14.9	15.8	+.02	+.26
Black	13.6	13.6	-.25	-.37
Spanish	15.3	15.1	+.10	+.06
Oriental	17.9	16.8	+.65	+.54

* based on total group mean (MAT-8 = 14.8, MAT-9 = 14.9) and SD (MAT-8 = 4.8, MAT-9 = 3.5).

The clear explanation for the Oriental's test performance can be discerned from cultural background experiences. Three dimensional paper folding is a part of the oriental sub-culture. Doing well on MAT-8 and MAT-9 does not require, for them, the ability to read instructions. Consequently, their performance exceeds the performance on all the test tasks requiring reading, independent of having learned the test question. The summary table below shows the comparative performance.

Group	Z-score*			
	BMCT	Multiple Aptitude Tests		
		No.7	No.8	No.9
Caucasian	+.01	+.29	+.02	+.26
Black	-.21	-.24	-.25	-.37
Spanish	-.07	0	+.10	+.06
Orientals	+.92	+.12	+.65	+.54

* based on Means and Standard Deviations given above.

The performance of the Black and Spanish groups was consistent across all four tests. However, both the White and Oriental groups showed inconsistent average test performance. The test scores are, therefore, suspicious.

Criterion Measures

The extensive review of the training program suggested that the best criterion measures would be related to the performance on each of the assigned projects given to trainees in the course of their training (during the time period studied). However, trainees entered the training program at different times in the period studied, some proceeded more rapidly than others, and thus, all of the proficiency measures (performance on assigned projects) were not available for all trainees. In addition, some trainees dropped out of the training program even though they had entered early enough to complete as many projects as the most proficient trainees. The table below shows the number of trainees completing each project (completion means doing the drawing for the project and completing a fabrication deemed acceptable for grading).

Number of Trainees Completing Each Project

	# of Projects				
Project Aspect	1	2	3	4	5
Drawing	39	36	29	15	4
Fabricating	37	32	18	8	3

Since some of the failure to complete projects could be attributable to later entry into the training program, the number of days in the program was correlated with the number of projects completed to determine how closely these variables were related. The table below shows the results.

Correlation Between Number of Days in the Program and Number of Projects Completed

		N Days		N Projects Completed	
N	r	Mean	SD	Mean	SD
46	.69	5.7	1.7	2.1	1.5

The correlation suggests a high, but not a 1:1 relationship between days spent in the program and projects completed. Since the sample diminishes quickly after project 3, the next set of analyses were confined to the Geometric Drawing, Pipefitting Drawing and Fabrication, as well as the first 3 projects. Grades on these nine exercises were correlated with two measures of learning efficiency, Drawings per Day and Fabrications per Day. The data are shown below.

Correlations Between Project Grades and Two Measures of Learning Efficiency

Learning Efficiency Measure	Project Grades								
	Geom. Draw.	Pipe Draw.	Pipe Fab.	Project 1		Project 2		Project 3	
				Draw.	Fab.	Draw.	Fab.	Draw.	Fab.
Drawings per day	.16	-.06	.19	.45**	.24	.05	.52**	.24	.20
Fabrications per day	.20	.09	.42**	.44**	.44**	.13	.40*	.36	.17

* significant at the .05 level

** significant at the .01 level

Thus, the most reasonable set of criterion measures globally describing performance were deemed to be the two measures of learning efficiency--Drawings per day and Fabrication per day. It also seemed that another overall criterion measure would be appropriate--Number of Projects Completed. However, before this criterion measure could be deemed appropriate, several considerations had to be evaluated. The number of projects completed was related to the number of days in school (see above), but not all of the accepted trainees were given the chance to enter the training program at its onset. Therefore, this possible contaminating effect was examined by partialing out the effect of the Number

of Days in the program from the correlation between one test score (MAT-9) and the Number of Projects Completed. The data are shown below.

		Criterion Measures			
				Number of Projects Completed	
Test	Group	Drawings per day	Fabrications per day	Simple Correlation	Correlation with days partialed out
MAT-9	Total	.42	.26	.23	.45

This suggests that the simple correlation between test scores and Number of Projects Completed is an underestimate of the relationship.[c]

The full validity table is shown on page 13.

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[c] The consistent negative relationship between test scores and days in school would result in always augmenting the relationship between test scores and Number of Projects Completed.

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Test	Group	Criteria: Drawings Per Day	Criteria: Fabrications Per Day	Criteria: Number of Projects Completed
BMCT	Total	-.36	-.34	-.22
	Minority	-.34	-.35	-.38
	Other	-.40	-.42	-.25
MAT-7	Total	-.08	-.14	-.21
	Minority	-.28	-.11	-.14
	Other	+.13	-.09	-.14
BMCT + MAT-7	Total	-.31	-.35	-.32
	Minority	-.39	-.27	-.31
	Other	-.23	-.43	-.33
MAT-8	Total	+.26	+.17	+.11
	Minority	+.14	+.37	+.27
	Other	+.38	-.03	-.10
MAT-9	Total	+.42	+.26	+.23
	Minority	+.35	+.37	+.36
	Other	+.50	+.14	+.09

Discussion

It is clear that the suspicious BMCT and MAT-7 normative and intercorrelational data are paralleled by suspicious BMCT and MAT-7 validity data. First, previous studies of Local 28 training groups, and second, other studies of comparable groups show data that are completely antithetical to the data in the table above. If one were to accept the validity data for the BMCT, the MAT-7 and the BMCT + MAT-7 scores, the next selection from the list would have to follow an order inverse from the first selection. That is, the ones first offered indentureship would come from the bottom of the list. This approach clearly defies logic.

It is equally clear that MAT-8 and MAT-9 are valid predictors of success in the limited range of training studied. There appear to be differences in the validity coefficients for Minorities and Others, so that if these two tests were used for subsequent selection, computations would have to be done to ensure the fair use of such scores. These computations can be done if the recommendations below are followed.

Recommendations

Applicants for acceptance into the apprentice training program should not be selected off any "lists" developed from the results of BMCT + MAT-7 scores. Those scores are suspect. It does no good to ask a candidate to sacrifice one day per week of gainful employment in order to be trained if that candidate merely scores high. High scores on such compromised tests clearly do not predict ability to do well in the training program.

There are two test scores which do predict training success--MAT-8 and MAT-9. Using proper statistical procedures, performance on those tests can be correlated with successful training performance. If vacancies in the training program must be filled by those who had taken the test battery (which included MAT-8 and MAT-9) selection must be based on MAT-8 and MAT-9 performance. The Psychological Corporation can provide guidance about the use of MAT-8 and MAT-9 test scores in the selection of prospective trainees. Upon written request The Psychological Corporation will provide that guidance.

The Court of Appeals in the 2nd Circuit which reviewed this case clearly indicated that the defendant contractor's association, Local 28 of the Sheet Metal Workers Union and the JAC are no strangers to the courts. In order to rectify this situation, an entirely new selection procedure must be devised for any new testing program. This program would include the following:

The sole contractor for the selection procedure should devise, in accordance with acceptable standards, a test battery that fairly measures the knowledges and abilities needed to benefit from the training program.

Items on existing tests should be scrambled to preclude the possibility of extracurricular training programs purveying the key to trainees in those programs.

The parties involved (with the advice and counsel of their experts) would be allowed to examine only the type of tests suggested for use in selecting applicants for

subsequent training openings. This would include the psychometric data and a review of each test's instructions and sample problems. Once agreement had been reached by the parties involved, the contractor would provide as many sets of instructions and sample items as required by the involved parties.

None of the parties, including the court appointed administrator, would be allowed to see the tests.

At least two versions of each test would be developed. Each would be a scrambled version of the other. This would prevent improper communication among examinees.

The contractor would be solely responsible for test administration, scoring and reporting. The tests that all parties agreed to use would be pre-packaged in shrink-wrapped plastic containers. The containers would be opened at the time of testing, and appropriate procedures would be employed to assure that all test materials distributed to applicants would be accounted for.

The contractor would have sole responsibility for distributing the tests, collecting the test data, and reporting the results to the organization retaining the contractor's services.

If secured versions of the proposed test battery were not available, the contractor would develop such tests in accordance with generally-accepted professional practices.

The Regents of The State of New York, the prestigious Educational Testing Service, and numerous other agencies take such precautions to insure that all examinees are evaluated in a fair and equivalent manner. The effect of the testing procedure has such similar consequences on the industry and those applying, that to retreat from appropriate discretionary controls would be a dereliction of duty.

We are not proposing our acceptance as contractors. We are merely giving you advice on selection procedures which will advance the cause of selecting the best person for the job.

ROSENTHAL & GOLDHABER
COUNSELORS AT LAW
44 COURT STREET
BROOKLYN, N.Y. 11201

(212) 237-9559

BENJAMIN ROSENTHAL (1905-1969)
MAX M. GOLDHABER
RICHARD F. GOLDHABER
WILLIAM ROTHBERG
ARTHUR M. GABOR

LONG ISLAND OFFICE
150 BROAD HOLLOW ROAD
MELVILLE, N.Y. 11746
(516) 421-2468

June 18, 1976

David Raff, Esq.
49-51 Chambers Street
New York, New York 10007

Dear Mr. Raff:

Enclosed herewith please find the following:

1. Manpower Control report for the week ending May 31, 1976.

2. Summary of the status of the apprentice program as of July 1, 1976. Please note that these numbers do not include any new apprentices to be brought in on July 1st, but reflect the present situation without those who graduate this month. The second term is listed twice with the smaller number representing those who were indentured prior to the December, 1975 test.

3. Analysis by term of the name, race and employment status of all apprentices.

4. Summary of additional apprentice assignments made by the Joint Apprenticeship Committee at its meeting held on June 16, 1976. These assignments were made pursuant to requests from association shops. The JAC is presently making a survey of non-association shops to determine job opportunities for additional apprentices.

The JAC, at said meeting, unanimously voted to discontinue the rotation system as of July 1, 1976. The basis for this decision is presently being dratted and will be forwarded to you in the near future. Briefly, among the major reasons was the dropout rate wherein we were advised by apprentices

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that unless they could work full time, they could not afford to stay in the program; impossibility of adequately training an apprentice who worked less than full time. This would place the apprentice at an economic disadvantage in a highly competitive market; possibility of decertification by the New York State Bureau of Apprenticeship Training for failure to meet their minimum standards.

Very truly yours,

pr
enc.

William Rothberg

c.c. Sol Bogen, Esq.
Taggart Adams, Esq.
Ellen Sawyer, Esq.
Dominick Tuminaro, Esq.

TOTAL INDENTURED APPRENTICES

TERM	MINORITY	WHITE	TOTAL
1	1	-0-	1
2	15	19	34
2	1	3	4
3	1	2	3
4	3	4	7
5	8	13	21
6	-0-	-0-	-0-
7	5	2	7
8	1	6	7
	35	49	84

% MINORITY 40
% WHITE 60
100%

UMEMPLOYED APPRENTICES BY TERM

TERM	MINORITY	WHITE	TOTAL
1	-0-	-0-	-0-
2	2	3	5
3	1	2	3
4	2	3	5
5	2	2	4
6	-0-	-0-	-0-
7	-0-	1	1
8	-0-	4	4
	7	15	22

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* These numbers do not include any new apprentices which may be brought in subsequent to July 1.